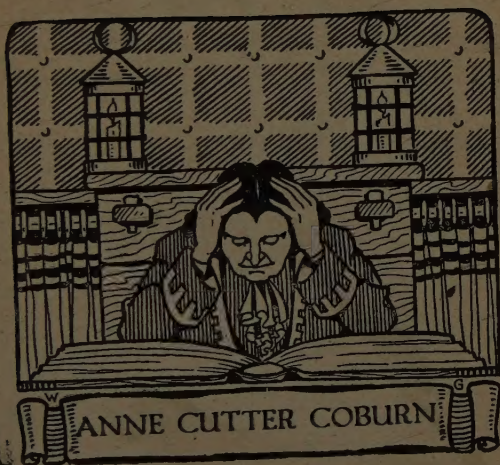




ANNE CUTTER COBURN

THE CONSTITUTION OF
THE UNITED STATES

JAMES M. BECK, LL.D.

*"Remove not the ancient Landmark,
which thy fathers have set."*

—PROVERBS XXII. 28.

THE CONSTITUTION OF THE UNITED STATES

Yesterday, Today—and Tomorrow?

BY

JAMES M. BECK, LL.D.

SOLICITOR-GENERAL OF THE UNITED STATES

HONORARY BENCHER OF GRAY'S INN

OFFICER OF THE LEGION OF HONOR

Foreword by

CALVIN COOLIDGE

PRESIDENT OF THE UNITED STATES

"Tantae molis erat Romanum condere gentem."



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THE CONSTITUTION OF THE UNITED STATES

— A —

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In grateful appreciation of the honour of being called by Gray's Inn to the historic Bar of England and of being admitted to the fellowship of its Bench, the author dedicates this book to

THE MASTERS OF THE BENCH OF GRAY'S INN



FOREWORD

By

CALVIN COOLIDGE

PRESIDENT OF THE UNITED STATES

It is of first importance that the study of the Constitution should be an essential part of the education of the American youth. The public spirit of an eminent American, Eldridge R. Johnson, in making possible a wide distribution among educational institutions of "The Constitution of the United States" by James M. Beck, deserves general recognition and commendation.

Mr. Beck has been recognized for years as an authority on our fundamental law. He is a lawyer of broad culture and wide learning. He has not only an acquaintance with the practical side of the law from his long experience at the bar, but as a student, has a deep insight into the theory of our institutions. In private practice and as Solicitor General of the United States he has had that intimate contact with our laws which is the best foundation for a sound understanding of their spirit, their truth and their wisdom. He understands the practical application of the Constitution to the actual affairs of life.

While we cannot all be trained in the technicalities of the law, we should all have some idea of our fundamental institutions. We need to know their relationship to our daily life, the reasons for their existence, and the

NOTE: This Foreword is reprinted from a special edition of ten thousand copies of Mr. Beck's "The Constitution of the United States" distributed by Mr. Eldridge R. Johnson to schools and libraries in the United States.

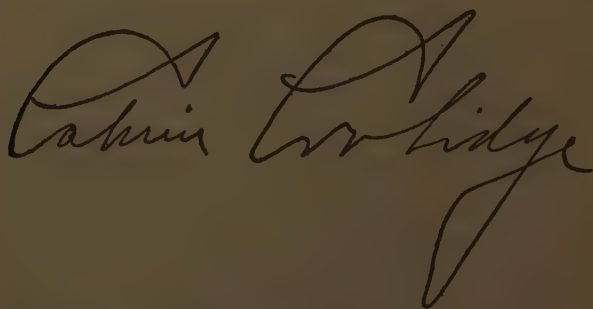
FOREWORD

benefits we derive from them, and the necessity to ourselves for their perpetuation. We must know that the Court is *our* Court.

The Constitution is not self-perpetuating. If it is to survive, it will be because it has public support. Such support is not a passive, but an active, operation. It means making adequate sacrifice to maintain what is of general benefit.

The Constitution of the United States is the final refuge of every right that is enjoyed by any American citizen. So long as it is observed, those rights will be secure. Whenever it falls into disrespect or disrepute, the end of orderly organized government, as we have known it for more than one hundred and twenty-five years, will be at hand.

The Constitution represents a government of law. There is only one other form of authority, and that is a government of force. Americans must make their choice between these two. One signifies justice and liberty; the other tyranny and oppression. To live under the American Constitution is the greatest political privilege that was ever accorded to the human race.

A handwritten signature in dark ink, reading "Calvin Coolidge". The signature is written in a cursive style with large, sweeping loops and a long, trailing flourish at the end of the name.

The White House, December 12, 1924.

INTRODUCTION

“What is the Constitution between friends?”

Such was the famous inquiry of a very practical politician, who many years ago asked a great and noble President of the United States to do something which the Constitution had forbidden. History does not record whether the inquiry was jocose or serious; but in any event it was eminently practical. Nor is there any record of the reply which President Cleveland made to his over-zealous party adherent.

There is a great deal more in the inquiry than the latter suspected; for the authority of a Constitution to tie the hands of a living generation in realizing its own destiny in its own way involves a profoundly interesting and philosophical problem. Mr. Jefferson, the great apostle of American democracy, once said that the Constitution was “for the living, and not for the dead.” The fair implication is that the subjection of a living generation to the opinions and beliefs of the dead is a form of intellectual slavery, and, as such, unworthy of a free and progressive people.

To the more philosophic mind of Edmund Burke, society is a continuing and very sacred compact between the dead, the living, and the unborn. The living owe a solemn debt to the dead to transmit the heritage of the past to the unborn.

Each theory marks an extreme, and the two views can be reconciled by the statement that, while the living are the masters of their own destiny, yet a wise and just people will be influenced, without being too rigidly restrained, by those principles and traditions which have the sanction of the past. They owe a duty to the unborn, for progress is a species of entail. It was in this sense that Burke said that the self-imposed restraints of a people are to be accounted among their rights.

In the *Jungle Book* of Rudyard Kipling he describes the

habits of the monkey, upon whom the rest and nobler portion of the animal world looked down with profound contempt. The trouble with the Banderlog (the simian species) was that they had no memories. They would loudly chatter on the tree-tops with respect to their rights and obligations and indulge in the most vainglorious boasting as to how far they were above the rest of the animal world; but, lacking a memory, any new distraction would forthwith make them forget all that they had resolved a few moments before. They were incapable of great, heroic enterprises, because they lived in the moment and continuity of thought or action was impossible to them. Any nation that is unmindful of yesterday and indifferent to the morrow and lives its whole life in the ephemeral thoughts and transient passions of the day suffers from the same limitation as the Banderlog, and, like the simian, will sink lower and lower into contempt.

A decent respect for the experience and settled convictions of the past is the mark of any great people, and such respect finds its highest expression in a constitution.

What is a constitution? In the American sense, it is primarily a form of government, which seeks to distribute governmental power in a manner that is most conducive to the public security and the common weal. But, as I shall presently show, it not only creates the mechanics of government, but establishes as a great ideal a system of fundamental principles, which have been so tested by long experience as to have a peculiar sanction. The dead of a single generation may have had no greater wisdom than the living; but the dead of many generations have had at least a greater collective experience.

The greatest invention of man was language. It bridged the seemingly impassable gulf between mind and mind. Only secondary in importance was the ability to record thought by signs, which culminated in the alphabet. With this facility, man not merely overcame space, but defied time. These two master inventions made possible a continuity of thought and experience which is quite impossible to the Banderlogs. Thus, a principle, which has been tested by two thousand years of ex-

perience, is likely to have greater justification than the passing thought of a living generation, which may be merely the synthesis of its temporary interests, its fleeting passions and exceptional conditions.

In this hectic age, many men have found their political power limited by a written Constitution, and are asking, in different forms, these questions :

"Why should the living be 'cribbed, cabined and confined' by an old piece of parchment in the Library of Congress, drafted one hundred and thirty-seven years ago by men, all of whom are now dead and the last of whom faded into the infinite azure of the past nearly a century ago?"

"Why should these men of a different era of the world's history, when mankind was only emerging from the chrysalis of a pastoral-agricultural age, control by their solemn command a generation that is living in a highly complex age, when the potential of human energy has been raised to the 'nth power?"

"Is the age of the wheelbarrow to control that of the *aéroplane*?"

If dynamic power were the "be-all and the end-all" of human society, there could only be a negative answer given to these searching inquiries. But society still rests largely upon the spiritual and not a mechanical basis, and the eternal verities have not been destroyed by the prodigious growth in thermodynamic power.

The great purpose of the Constitution is to assert these eternal verities of liberty and justice, and the living generation may as well pay heed in this respect to the tested wisdom of a mighty past as to the noble beauty of a Gothic cathedral, which is not less inspiring because its builders are dead.

A constitution, therefore, is something more than a scheme of government; it is the definite expression of the higher law. It need not be in writing; for it can be based upon prescriptive usage, as well as upon formal written statement. Its essential spirit is that of a higher law.

The term in this way had its origin. In Roman law, a

constitution was any decree, edict or law which the emperor, as the supreme authority, imposed upon the people without the initiative or action of any inferior governmental power.

Mediaeval ecclesiasticism borrowed the term from the Roman law, and in the Middle Ages constitutions were those apostolic letters which set forth for the whole Church some great and comprehensive principle in a permanent form. The term was applied to any formal statement of the boundaries between civil and ecclesiastical power. Thus, the so-called "Constitutions of Clarendon," which were drawn up at the Council of Clarendon in the reign of Henry II, set forth the true boundary between these conflicting jurisdictions.

The first application of the term to a scheme of civil government was probably made by Francis Bacon in approving the form of one of the Virginia Charters. He was profoundly learned in both the civil and the common law, and, possibly in the spirit of pedantry which characterized his writings, he applied the word to the local government, which King James gave to the London "adventurers," who founded the first English settlement in North America in 1607. Since then, the word has had its present restricted meaning, and is as applicable to the great body of principles, written and unwritten, which form the British Constitution, as to the formal written document adopted by the founders of the American Republic.

There is, however, this important difference between the two forms of a constitution. The British Constitution has as its only sanction the acquiescence of the living generation; for there is no feature of the British Government and no principle of liberty which the House of Commons may not now, by a bare majority, impair or destroy. At one time, no law passed by Parliament would have validity unless sanctioned by the Crown; but the last exercise of the royal veto was in Queen Anne's time, and, as a constitutional principle, it is now regarded as non-existent.

It is true that the power of the English people to change their government was, until recent years, much restricted by the power of an hereditary House of Lords; but, during the

Asquith Administration, this restraint upon the power of the majority was almost wholly destroyed by a new provision that, if the House of Commons passes a law and the House of Lords fails to concur, and the Government goes to the people upon the issue thus raised, and is returned to power, the House of Lords must concur in the law when thus re-enacted.

In the American sense of the word "constitution," this goes far to leave England without any constitution in the sense of an enforceable restraint upon the power of the majority.

In America, the Constitution more resembles the paramount authority of a Roman emperor. Enforced as it is by the judiciary, it restrains the power of the majority and is unalterable except by the adoption of a constitutional amendment with the concurrence of three-fourths of the States of the Union. In one respect, namely, the equality of representation in the Senate, it is unalterable even by this cumbrous and difficult method.

Thus the American Constitution is the most conspicuous and effective manifestation of a higher law. That such a subjection of the living to the higher law, as evolved by the dead, should in this feverish age create antagonism, is natural; and the purpose of this book is to explain the historic evolution of that Constitution, its formulation in 1787, and its fundamental political philosophy.

The reader is invited to consider how the Constitution was made, what its essential meaning is, and how it has been and is still being marred in the mad spirit of innovation of this hectic age.

I have elsewhere likened the Constitution to a Gothic cathedral, like that of Rheims. Its foundations seem secure, even though some of its buttresses may be weakened and its statuary mutilated. Nevertheless it remains a noble and serviceable temple of Liberty and Justice. Let us hope that, with the present indifference of the masses to the Constitution and the spirit of innovation of this restless and impatient age, that the time will not come when the Constitution will be as the Cathedral of Rheims, when the author saw it in the sum-

mer of 1916. Rheims was a noble but pitiable ruin. Its high altar had been overthrown, and its glorious rose windows hopelessly shattered.

The high altar of the Constitution is the self-restraint which the American people of 1787 were wise enough to impose upon themselves, and their posterity, and the rose windows are those great traditions of Liberty which we have gained at an infinite sacrifice of treasure and life from our English-speaking ancestry.

A final word of explanation. This book had its origin in five lectures which the author delivered in the Hall of Gray's Inn, London, on June 13th, 15th and 19th, 1922, and June 25th and July 2nd, 1923, at the invitation and under the auspices of the University of London and of Gray's Inn. The lectures were subsequently published in New York and London, and, later, in Paris.* Curiously enough, the French edition sold more copies in six months than were sold in England. Several editions were published in America, and, as there seemed to be a continuing demand, the author decided to rewrite the book entirely by eliminating the lecture form and adding considerable material, with which the contents of the book have been at least trebled.

This book is therefore a new one, and the author has endeavored to include all available material relating to the making of the Constitution. In this attempt, he acknowledges his great indebtedness to the exhaustive compilations of documentary data, which the world owes to the patient scholarship of Paul Leicester Ford and Doctor Max Farrand. An acknowledgment is also due to the author's friend and office associate, Robert P. Reeder, for his valued coöperation in verifying historical data and for many useful suggestions.

JAMES M. BECK.

Washington, D. C.,

May 1st, 1924.

* *La Constitution des Etats-Unis*, par James M. Beck. Traduction de M. John Charpentier; avant-propos de M. F. Larnaude, Doyen honoraire de la Faculté de Droit de l'Université de Paris. Librairie Armand Colin, 103, Boulevard Saint-Michel, Paris.

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**THE CONSTITUTION OF
THE UNITED STATES**

THE CONSTITUTION OF THE UNITED STATES

CHAPTER I

THE GENESIS OF THE CONSTITUTION

"Look unto the Rock, whence ye are hewn."

—Isaiah, li, 1.

THE Constitution has its roots in the great and heroic past of the English-speaking race. No idea is more fanciful—although it has the authority of a complimentary expression by Gladstone—than that which suggests that it was fashioned as a *tour de force* by about fifty colonial statesmen by a single effort and at a given time. It cannot be understood without an appreciation of the history of that *gens æterna*, the English race. Without its genius for constructive government, it could never have been.

As "a jest's prosperity lies in the ear of him that hears it," similarly the strength of any political institution must lie in the capacity of a people to bring it into being and to perpetuate in practice its existence.

It has seemed to many miraculous that a country boy could leave a little village on the Avon and within a period of twenty years after his arrival in London write as many masterpieces for the stage. But it is equally amazing—although that fact is not as generally recognized—that there could be an audience in London in Elizabeth's time that was capable of appreciating and assimilating the great plays of Shakespeare.

Similarly the admiration with which the world has always regarded the Constitution of the United States should also be

given to a people who had sufficient genius for government to create it and make it workable. There can be no successful constitution for any people unless it has a deep and vital sense of constitutional morality, and its essence is a spirit of self-restraint which is willing to subordinate the fleeting interests and ardent passions of the living moment to certain fundamental truths which are believed to be immutable.

The American colonists had this sense of morality in a very high degree. The conditions of colonial development had profoundly stimulated in these English pioneers the sense and genius for constitutionalism.

In his speech on Conciliation with America of March 22, 1775, Edmund Burke showed his characteristically philosophic comprehension of this powerful constitutional conscience of the remote and neglected American colonists. After stating that in no other country in the world was law so generally studied, and referring to the fact that as many copies of Blackstone's Commentaries had been sold in America as in England, he added:

"This study renders men acute, inquisitive, dexterous, prompt in attack, ready in defence, full of resources. In other countries the people, more simple and of a less mercurial cast, judge of an ill principle in government only by an actual grievance; here they anticipate the evil, and judge of the pressure of the grievance by the badness of the principle."

These hardy pioneers were the privileged heirs of the great political traditions of England. While the Constitution of the United States was very much more than an adaptation of the British Constitution, yet its underlying spirit was that of the English-speaking race and the common law. Behind the framers of the Constitution, as they entered upon their momentous task, were the mighty shades of Simon de Montfort, Coke, Sandys, Bacon, Eliot, Hampden, Lilburne, Milton, Shaftesbury and Locke. Could there be a better illustration of Sir Frederick Pollock's noble tribute to the genius of the common law:

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"Remember that Our Lady, the Common Law, is not a task-mistress, but a bountiful sovereign, whose service is freedom. The destinies of the English-speaking world are bound up with her fortunes and migrations and its conquests are justified by her works."

When the Constitution was formulated in 1787, one world war had recently ended—and Civilization was entering the eclipse of a new and greater one. Then, as now, half the world was prostrated by the wounds of fratricidal strife. As Washington said "The whole world was in an uproar," and he added that the task "was to steer safely between Scylla and Charybdis." The problem, then as now, was not only to make "the world safe for democracy," but to make democracy, for which there is seemingly no alternative, safe for the world. The thirteen colonies in 1787, while small and relatively unimportant, were, however, a little world in themselves, and, relatively to their numbers and resources, this problem, which they confronted and solved, differed in degree but not in kind from that which now confronts civilization. Impoverished in resources, exhausted by the loss of the flower of their youth, demoralized by the reaction from feverish strife, the forces of disintegration had set in in the United States between 1783 and 1787. Law and order had almost perished and the provisional government had been reduced to impotence. A few wise and noble spirits, true Faithfuls and Great Hearts, led a despondent people out of the Slough of Despond until their feet were again on firm ground and their faces turned towards the Delectable Mountains of peace, justice, and liberty. Let it be emphasized that they did this, not merely in seeking broader powers for the central government but incidentally by imposing salutary restraints not only upon the government which they created but also, and more significantly, upon their own residual power as a people. That spirit of self-restraint is one and an important feature of the American Constitution.

The spirit of the framers of the Constitution was less emotional and more practical than that which inspired the Declaration of Independence. This is well stated by Mr. Beard in his "Supreme Court and the Constitution" as follows:

"At the outset it must be remembered that there were two great parties at the time of the adoption of the Constitution—one laying emphasis on strength and efficiency in government and the other on its popular aspects. Quite naturally the men who led in stirring up the revolt against Great Britain and in keeping the fighting temper of the Revolutionists at the proper heat were the boldest and most radical thinkers—men like Samuel Adams, Thomas Paine, Patrick Henry and Thomas Jefferson. They were not, generally speaking, men of large property interests or of much practical business experience. In a time of disorder, they could consistently lay more stress upon personal liberty than upon social control; and they pushed to the extreme limits those doctrines of individual rights which had been evolved in England during the struggles of the small landed proprietors and commercial classes against royal prerogative, and which corresponded to the economic conditions prevailing in America at the close of the eighteenth century. They associated strong government with monarchy, and came to believe that the best political system was one which governed least. A majority of the radicals viewed all government, especially if highly centralized, as a species of evil, tolerable only because necessary and always to be kept down to an irreducible minimum by a jealous vigilance. * * *

The new American political system based on these doctrines had scarcely gone into effect before it began to incur opposition from many sources. The close of the Revolutionary struggle removed the prime cause for radical agitation and brought a new group of thinkers into prominence. When independence had been gained, the practical work to be done was the maintenance of social order, the payment of the public debt, the provision of a sound financial system and the establishment of conditions favorable to the development of the economic resources of the new country. The men who were principally concerned in this work of peaceful enterprise were not the philosophers, but men of business and property and the holders of public securities. For the most part they had had no quarrel with the system of class rule and the strong centralization of government which existed in England. It

was on the question of policy, not of government structure, that they had broken with the British authorities."

From these conflicting tendencies of radicalism and conservatism, the men of the Revolution after painful travail developed a Constitution, which was a composite of their antagonistic theories. So enduring was their achievement, that to-day the Constitution of the United States is the oldest comprehensive written form of government now existing in the world. Few, if any, forms of government have better withstood the mad spirit of innovation, or more effectively proved their merit by the "arduous greatness of things done."

One of England's greatest Prime Ministers, William Pitt, shortly after the adoption of the Constitution, prophetically said that it would be the admiration of the future ages and the pattern for future constitution building. Time has verified his prediction, for constitution making has been, since the American Constitution was adopted, a continuous industry. The American Constitution has been the classic model for the federated State. Lieber estimated that three hundred and fifty constitutions were made in the first sixty years of the nineteenth century, and, in the constituent States of the American Union, one hundred and three new Constitutions were promulgated in the first century of the United States.

"Have you a copy of the French Constitution?" was asked of a bookseller during the second French Empire, and the characteristically witty Gallic reply was: "We do not deal in periodical literature."

Constitutions, as governmental panaceas, have come and gone; but it can be said of the American Constitution, paraphrasing the noble tribute of Dr. Johnson to the immortal fame of Shakespeare, that the stream of time, which has washed away the dissoluble fabric of many other paper constitutions has left almost untouched its adamantine strength. Excepting the first ten amendments, which were virtually a part of the original charter, only nine others have been adopted in more than one hundred and thirty years. What other form of government has better stood the test of time?

A constitution, while primarily for the distribution of governmental powers, is, in its last analysis, a formal expression of adherence to that which in modern times has been called the higher law, and which in ancient times was called natural law. The jurisprudence of every nation has, with more or less clearness, recognized the existence of certain primal and fundamental laws which are superior to the laws, statutes, or conventions of living generations. The original use of the term was to import the superiority of the Imperial edict to the laws of the Comitia. All nations have recognized this higher law to a greater or less extent. If we turn to the writings of the most intellectual race in ancient time and possibly in recorded history—the Greeks—we shall see the higher law vindicated with incomparable power in the moral philosophy of its three greatest dramatists, Æschylus, Sophocles, and Euripides. How was it better expressed than by Antigone when she was asked whether she had transgressed the laws of the state and replied:

“Yes, for that law was not from Zeus, nor did Justice, dweller with the gods below, establish it among men; nor deemed I that thy decree—mere mortal that thou art—could override those unwritten and unfailing mandates, which are not of to-day or yesterday, but ever live and no one knows their birthtide.”

Five centuries later the greatest of the Roman lawyers and orators, Cicero, spoke in the same terms of a higher law, “which was never written and which we are never taught, which we never learn by reading, but which was drawn by nature herself.”

The Roman jurists gave it express recognition. They always recognized the distinction between *jus civile*, or the law of the State, and the *jus naturale*, or the law of Nature. They nobly conceived that human society was a single unit and that it was governed by a law that was both antecedent and paramount to the law of Rome. Thus, the idea of a higher law transcending the power of a living generation, and therefore eternal as justice itself—became lodged in our system of juris-

prudence. Nor was the common law wanting in some, although a very vague recognition, of a higher law that would curb the power of King or Parliament, for its earlier masters, including four Chief Justices (Coke, Hobart, Holt, and Popham), supported the doctrine, as laid down by Coke, that the judiciary had the power to nullify a law if it were "against common right and reason." (Bonham's Case, 8 Coke Rep. 114.) *

The doctrine of natural law did not originate in Rome but in Greece. It came to Rome long after the distinction between *jus civile* and *jus gentium* had been fully established. The identification of *jus gentium* with *jus naturale* came after the characteristics of *jus gentium* had been fully established. It was an afterthought to explain a condition.

This conception of a higher law was of political importance during the later Middle Ages and in more recent times, especially in the latter part of the Eighteenth Century, when the Encyclopædists made it the basis of their political philosophy and thus not only precipitated the French Revolution but profoundly affected in America the revolt of the Colonies against the Mother Country. At best it was a vague ideal, and probably implied little more than the right of revolt against oppressive laws.

This view as to a moral limitation of government and the

*Too much stress cannot be placed upon Coke's famous dictum, but whether it was good law or not, the important fact is that the colonists accepted it as a part of the common law.

Coke did not go as far in his Institutes as he did in *Bonham's case*. He was not an unbiassed scholar. Pollock, First Book of Jurisprudence, 250, says concerning that case:

"Coke announced this opinion with his usual vehemence and even more than his usual inaccuracy or disingenuousness in reading his own particular opinion into the authorities on which he professed to rely."

Nor is Popham an especially strong authority. He was a successful lawyer and judge, although he had been a highway robber until he was thirty. He compiled a volume of reports of his decisions while he was Chief Justice, but Campbell, in his Lives of the Chief Justices, says:

"They are wretchedly ill done, and they are not considered of authority. We should have been much better pleased if he had given us an account of his exploits when he was leader of a band of freebooters."

denial of its omnipotence was powerfully accentuated in America by the very conditions of its colonization. The good yeomen of England who emigrated to America went in the spirit of the noble and intrepid Kent, when, turning his back upon King Lear's temporary injustice, he said that he would "shape his old course in a country new." Was it strange that the early colonists, as they braved the hardships and perils of a dangerous voyage, only to be confronted in the wilderness by disease, famine and massacre, should fall back for their own government upon these primal verities of human society, and claim not only their inherited rights as Englishmen, but also the peculiar privileges of pioneers in an unconquered wilderness?

There was however an earlier and more contributory source to the development of the spirit of constitutionalism in the Colonies.

Long prior to the Tudors, the English people had had practical experience of a form of constitutionalism in their commercial and guild charters. These gave them an attitude of independence towards even the Crown, when it contracted with them for special rights of semi-autonomous government.

Trade and craft guilds, which had power to regulate not only their own members but all persons engaged in the same trade or craft, received charters long before the time of Elizabeth. "The goldsmiths were chartered in 1327, the mercers in 1373, the haberdashers in 1407, the fishmongers in 1433, the vintners in 1437, the merchant tailors in 1466. . . . Companies of foreign adventurers, similar in all respects to the earlier guilds except that their members were foreign instead of domestic traders, were organized later." The Russian Company was chartered in 1555 and the East India Company in 1600.

A municipal corporation in early English law was a form of subordinate government, "and membership could not be acquired simply by residing within the town limits. It exercised a minute supervision over the inhabitants,—among other things regulating trades. The guilds or companies did the same thing, only on a more restricted scale." *

* Williston, 2 Harv. L. Rev. 108.

Doctor Cheyney (Professor of European History in the University of Pennsylvania) says in his "Industrial and Social History of England (pp. 57-59):

"The towns differed widely in their form of government; but all had charters from the king or from some nobleman, abbey, or bishopric on whose lands they had grown up. . Such a charter usually declared the right of the town to preserve the ancient customs which had come to be recognized among its inhabitants, and granted to it certain privileges, exemptions, and rights of self-government. The most universal and important of these privileges were the following: the town paid the tolls and dues owed to the king or other lord by its inhabitants in a lump sum, collecting the amount from its own citizens as the latter or their own authorities saw fit; the town courts had jurisdiction over most suits and offences, relieving the townsmen from answering at hundred and county court suits which concerned matters within their own limits; the townsmen, where the king granted the charter, were exempt from the payment of tolls of various kinds throughout his dominions; they could pass ordinances and regulations controlling the trade of the town, the administration of its property, and its internal affairs generally, and could elect officials to carry out such regulations. These officials also corresponded and negotiated in the name of the town with the authorities of other towns and with the government. From the close of the thirteenth century all towns of any importance were represented in Parliament. These elements of independence were not all possessed by every town, and some had special privileges not enumerated in the above list. The first charter of a town was apt to be vague and inadequate, but from time to time a new charter was obtained giving additional privileges and defining the old rights more clearly."

These municipal corporations and trade guilds had long developed in the English-speaking race a belief that neither Crown nor Parliament should be omnipotent.

This spirit of constitutionalism in America, which culminated in the Constitution of the United States, had its more

immediate *institutional* origin in the spacious days of Queen Elizabeth. That wonderful age, which gave to the world not only Shakespeare, Spenser, Bacon, and Jonson, but also Drake, Frobisher and Raleigh, was the Anglo-Saxon reaction to the Renaissance. The spirit of man had a new birth and was breaking away from the too rigid bonds of ancient custom and authority.

Among the notable, but now little remembered, leaders of that time was Sir Edwin Sandys, the leading spirit of the London (or Virginia) company. He was a Liberal when to be such was an "extra hazardous risk." He was the son of a Liberal, for his father, when vice chancellor of Cambridge University, had been sent to the Tower for preaching in defence of Lady Jane Grey, and later, as a bishop and as the Archbishop of York, he was a friend of the Puritans and as such came frequently into collision with other powerful ecclesiastics. The son, Sir Edwin, was the foe of monopolies, and in the same Parliament that impeached the great genius of Gray's Inn, Francis Bacon, Sandys advocated the then novel proposition that accused prisoners should have the right to be represented by counsel, to which the strange objection was made that it would subvert the administration of justice. As early as 1613, he had boldly declared in Parliament that even the King's authority rested upon the clear understanding that there were reciprocal conditions which neither ruler nor subject could violate with impunity. He might not too fancifully be called the "Father of American Constitutionalism." In 1606 he was one of the small group of Englishmen who secured for the London Company a charter for Virginia under which the colonists were to have "all the liberties, franchises and immunities" of British subjects, although no political powers were granted. In 1609 and 1612, largely through his efforts, this company acquired a measure of political control over the colony; and when a few years later the complete domination of the company came into the hands of Sandys and his friends, they availed themselves of the authority which had already been given to the company in its charter, and framed a Great Charter which was granted to its colonists, under which the

first representative government in America was established in the following year. By this charter self-government, freedom of speech, equality before the law and trial by jury were assured. Three years later by another constitution further rights were granted to the colonists. "Upon the charters thus culminating all future rights and liberties of the colonies, north and south, of the revolutionary America of 1775 and of the Republic of to-day, are built."

It is interesting to recall that these charters of government, which were the beginning of constitutionalism in America and therefore the germ of the Constitution of the United States, were put in legal form for royal approval by Lord Bacon himself. Thus the immortal Treasurer of Gray's Inn is directly linked with the development of constitutional freedom in America.*

Bacon became a member of the council for the Virginia Company in 1609. His deep interest in it is attested in the dedication to him by William Strachey in 1618 of the latter's *Historie of Travaile into Virginia Brittania*.

In his speech in the House of Commons on January 30, 1621, Bacon saw a vision of the future and predicted the growth of America, when he said:

*Francis Bacon, however, was not the only link which serves to connect Gray's Inn with the development of the American Commonwealth. Among Francis Bacon's fellow Masters of the Bench was Lawrence Washington, the ancestor of the great Washington. Probably they often sat side by side at the Benchers' table, and how little either could have anticipated that a descendant of Lawrence Washington would one day be the founder of a great republic in the western world, which with its world-wide empire would become the greatest nation of the world.

Another student of the Inn was Andrew Hamilton, who emigrated to America, was called to the Philadelphia bar, and became, after the famous Zenger trial, the greatest American lawyer of the colonial era. When Pennsylvania desired to build a State House for its government, there then being no professional architect in the Colonies, Andrew Hamilton was selected to draw the designs, and the State House in Philadelphia was his work. A comparison of his original plan with that of Gray's Inn will show such resemblances in minor details as to suggest the possibility that, when Andrew Hamilton drew his plans, his mind lovingly reverted to the famous Inn which had called him to the English bar. In this building, now known as "Independence Hall," and justly revered as the cradle of American liberty, the Declaration of Independence was signed and its Constitution formulated. It is therefore a peculiar satisfaction to the author of this book that it has its origin in lectures, delivered by him as an Honorary Bencher of Gray's Inn, in this noble hall of Tudor times.

"This kingdom now first in His Majesty's Times hath gotten a lot or portion in the New World by the plantation of Virginia and the Summer Islands. And certainly it is with the kingdoms on earth as it is in the kingdom of heaven, sometimes a grain of mustard seed proves a great tree."

Truly the mustard seed of Virginia did become a great tree in the American Commonwealth.

One of Bacon's nephews, also of the Inns of Court, Nathaniel Bacon, became the first Liberal leader in the Colonies, and led the first revolt against colonial misrule. He was probably of Gray's Inn, for it is difficult to imagine a Bacon studying in any Inn than the one to which the great Bacon had given so much loving care.

Due to these charters, on July 30, 1619, the little remnant of colonists whom disease and famine had left untouched were summoned to meet in the church at Jamestown to form the first parliamentary assembly in America, the first-born of the fruitful Mother of Parliaments.

It was due to Sandys not only that the first permanent English settlement in the Western World was planted at Jamestown in 1607, but as an incident of the Virginia Company, that a later group of "adventurers," the Pilgrims, were driven by chance of wind and wave to land on the coast of Massachusetts. They received the royal promise of freedom to worship as they pleased and the grant under which they set sail was sealed with the approbation of the members of the company who had assembled at Sandys' house. Thus was established, not only the beginning of England's colonial Empire—still one of the most beneficent forces in the world—but also the principle of local self-government, which, in the Western World, was destined to develop the American Commonwealth. The compact, signed in the cabin of the *Mayflower*, while not in strictness a constitution, like the Virginia Charter, was yet destined to be a landmark of history.

Sandys suffered for his convictions, for the party of reaction convinced King James that Virginia was a nest of sedition, and the arbitrary ruler, in the reorganization of the London

company, gave a pointed admonition by saying: "Choose the devil, if you will, but not Sir Edwin Sandys." In 1621 he was committed to the Tower and only released after the House of Commons had made a vigorous protest against his incarceration.

His successor as treasurer of the London company was Shakespeare's patron, the Earl of Southampton (also of Gray's Inn), and it is not a fanciful conjecture to assume that, when the news of the disaster which befell one of the fleets of the London Company on the Island of Bermuda reached England, it inspired Shakespeare to write his incomparable sea idyl, *The Tempest*. If so, this lovely drama was Shakespeare's unconscious apostrophe to America, for in Ariel—seeking to be free—can be symbolized her awakening spirit, while Prospero, with his thaumaturgic achievements, suggests a constructive genius, which in a little more than a century has made one of the least of the nations to-day one of the greatest.

The theory that *The Tempest* was inspired by the shipwreck of Admiral Sommers' fleet on the Island of Bermuda is more than a conjecture, for its probability is indicated by many striking resemblances between the play and the contemporaneous account of the shipwreck. The colonies of Virginia and later of Massachusetts were, at first, communistic in their organization, and Shakespeare may well have had the experience of the Virginia adventurers in mind when, in *The Tempest*, he makes his *Gonzalo* say:

"I' the commonwealth I would by contraries
 Execute all things: for no kind of traffic
 Would I admit; no name of magistrate;
 Letters should not be known; riches, poverty,
 And use of service, none; contract, succession,
 Bourn, bound of land, tilth, vineyard, none:
 No use of metal, corn, or wine, or oil:
 No occupation; all men idle, all;
 And women too; but innocent and pure:
 No sovereignty:—
 All things in common nature should produce

Without sweat or endeavor: treason, felony,
Sword, pike, knife, gun, or need of any engine,
Would I not have; but nature should bring forth,
Of its own kind, all foison, all abundance,
To feed my innocent people."

Thus Bacon, Sandys, Southampton and the liberal leaders of the House of Commons had implanted in the ideas of the colonists the spirit of constitutionalism, which was destined to influence profoundly the whole development of the American colonies, and finally to culminate in the Constitution of the United States.

It was this group of men, principally merchants of the "City," feeling most keenly the evils of despotism at home, who established in the New World those ancient liberties of the towns and guilds, and who continued in Parliament those struggles which eventually established constitutional government in England. The later struggle in the Long Parliament, the fall of Charles I, and more especially the deposition of James II, the accession of William of Orange, and the substitution for the Stuart claim of divine right that of the supremacy of the people in Parliament, naturally had their reaction in America in intensifying the spirit of constitutionalism in the growing American Commonwealth.

The colonial history was therefore increasingly marked by a spirit of individualism, a natural partiality for local rule, and a tenacious adherence to their special privileges, whether granted to Crown colonies, like New Hampshire, New York, New Jersey, Virginia, the two Carolinas, and Georgia, or proprietary governments, like Maryland, Delaware, and Pennsylvania, or charter governments, such as Massachusetts, Rhode Island, and Connecticut. In the three colonies last named formal corporate charters were granted by the Crown, which in themselves were constitutions in embryo, and the colonists thus acquired written rights as to the government of their internal affairs, upon the maintenance of which they jealously insisted. Thus arose in America the spirit which treated constitutional rights, not so much as special and revocable privileges granted by plenary Sovereignty, but as con-

tractual obligations which, if unenforceable in the Courts against the Sovereign, yet gave them a *locus standi* in Parliament and at the greater forum of public opinion.

All this developed in the colonists a powerful sense of constitutional morality, and its pertinency to my present theme lies in the fact that when each of the thirteen colonies became, at the conclusion of the War of Independence, a separate and independent nation, they were more concerned, in establishing a central government, to limit its authority and to maintain local self-government than they were to give to the new-born nation the powers which it needed. They carried their constitutionalism to extremes, which nearly made a strong and efficient central government an impossibility.

Nothing was less desired by them than a unified government. It was destined to be wrung from their hard necessities. The Constitution was the reflex action of two opposing tendencies, the one the imperative need of an efficient central government, and the other the passionate attachment to local self-rule. Co-operation between the colonies had been a matter of long discussion and earnest debate, and primarily resulted from the necessity of defence against a common foe—the French in Canada and the Indians of the forest. In 1643 four of the New England colonies—Massachusetts, Plymouth, Connecticut and New Haven—united in a league to defend themselves against the Indians, the French and the Dutch, and they remained leagued together for nearly forty years. In 1697 William Penn made the first suggestion for a union of all the colonies. In 1754 a council was held at Albany at the instance of the Crown to provide the means for the defence against France in Canada, and it was then that Franklin submitted the first concrete form for a union of the colonies into a permanent alliance. It was in advance of the times, for, conservative as it was, it was opposed both by the Crown and the colonies themselves. Franklin afterwards claimed that if his Albany plan had been adopted, the separation from the British Empire might never have taken place.

The time was not ripe for any such union, and the reason was apparent. The colonies differed very much in the char-

acter of their populations, in the nature of their economic interests, and in their political antecedents. They were not wholly of the English race. Many nations in Europe had already contributed to the population. For example, New York was partly Dutch, and in Pennsylvania there was a considerable element of the Swedes, Germans, and Swiss. Moreover, the colonists were as widely separated from each other, measured by the facilities of locomotion, as are the most remote nations of the world to-day. Only a few men ever found occasion to leave their colony to journey to another, and most men never left, from birth to death, the community in which they lived. Outside of the few scattered communities in the different colonies there was an almost unbroken wilderness, with few wagon roads and in places only a bridle path. The only methods of communication were the letters and still fewer newspapers, which were carried by post riders often through an almost trackless wilderness.

Obviously, a working government could not easily be constituted between peoples of different religions, races, and economic interests, who, for the most part, never met each other face to face and with whom frequent and easy communication was impossible.

The differences between the colonies and the mother-country with respect to internal taxation slowly developed into an issue of constitutionalism rather than of legislative policy. As in England, the immediate question affected the power of the Crown to give to the customs inspectors the power to make general searches and seizures to enforce the navigation laws. In 1761 James Otis, of Massachusetts, made a fateful speech before the colonial legislature, in which, asserting the illegality of the search warrants on the ground that they violated the constitutional rights of Englishmen to protection in their own homes, he asserted that Acts of Parliament which violated the sanctity of the home were void and that, more specifically, they violated the charter granted to Massachusetts. Asserting the doctrine which he regarded as that of the English common law, as stated by Coke and three other Chief Justices, he said:

"To say the Parliament is absolute and arbitrary is a contradiction. The Parliament cannot make two and two five. Omnipotency cannot do it. . . . Parliaments are in all cases to declare what is for the good of the whole; but it is not the declaration of Parliament that makes it so: there must be in every instance a higher authority, viz., God. Should an Act of Parliament be against any of His natural laws, which are immutably true, their declaration would be contrary to eternal truth, equity and justice, and consequently void; and so it would be adjudged by the Parliament itself, when convinced of their mistake."

It is a curious fact that in the reaction from the tyranny of the Stuarts England abandoned this principle of the common law by substituting for the power of the Crown the omnipotence of Parliament, while in America the very vague and unworkable abstraction of the common law, which purported to give the judiciary the power to invalidate an act of the legislature, when against natural reason and justice, was developed into the great principle, without which institutions in an heterogeneous and widely scattered democracy would be unworkable, namely that the powers of government should be strictly defined, and that neither the executive, the legislative, nor the judicial departments of the government should go beyond the fair intent of the fundamental law.

Like the common law, the Constitution was thus the result of a slow evolution. Mr. Gladstone, in his oft-quoted remark, gave an erroneous impression when he said:

"As the British Constitution is the most subtle organism which has proceeded from progressive history, so the American Constitution is the most wonderful work ever struck off, at a given time by the brain and purpose of man."

This assumes that the Constitution sprang, like Minerva, armed *cap-à-pie*, from the brain of the American people, whereas it was as much the result of a slow, laborious, and painful evolution as was the British Constitution. Madison, who probably knew as much as any one man concerning the

formation of our system of government, said long after the adoption of the Constitution :

“The change in our government, like many other important improvements, ought to be ascribed rather to a series of causes than to any particular and sudden one, and to the participation of many, rather than to the efforts of a single agent. It is certain that the general idea of revising and enlarging the scope of the federal authority, so as to answer the necessary purposes of the Union, grew up in many minds, and by natural degrees, during the experienced inefficiency of the old confederation.”

When the constitutional struggle between the colonies and the Parliament became acute, the necessity of a union for a common defence became imperative. As early as July, 1773, Franklin recommended the “convening of a General Congress” so that the colonies would act together. His suggestion was followed in the Virginia House of Burgesses in May, 1774, which issued the invitation for such a Convention, and as a result there met in Philadelphia on September 5 of that year the first Continental Congress, styled by themselves: “The Delegates appointed by the Good People of these Colonies.” Nothing was further from their purpose than to form a central government or to separate from England. This Congress only met as a conference of representatives of the colonies to defend what they conceived to be their constitutional rights.

Before the second Continental Congress met in the following year, the accidental clash at Lexington and Concord had taken place, and as the Congress again reconvened in the following year a momentous change had developed, which was, in fact, the beginning of the American Commonwealth. The Congress became by force of circumstances a provisional government, and as such it might well have claimed plenary powers to meet an immediate exigency. So indisposed were they to separate from England or to substitute for its rule that of a new government, that the Continental Congress, when it then involuntarily took over the government of America, failed

to exercise any adequate power. It remained simply a conference without real power. Each colony had one vote and the rule of unanimity prevailed. Even its decisions were merely advisory, for they amounted to little more than recommendations to the constituent States as to what measures should be taken. Each colony complied with the recommendation in its discretion and in its own way. Notwithstanding this fatal lack of authority, the Continental Congress, then actually engaged in civil war, created an army, and, through its committees, entered into negotiations with foreign nations. To support the former, it issued paper money, with the disastrous result that could be readily anticipated. While it had a presiding officer, it had no executive, and the new nation, which was hardly conscious of its own birth, had no judiciary.

Had this *de facto* government assumed the plenary powers which provisional governments must, under similar circumstances, necessarily assume, it would have been better for the cause of the colonists. The attitude towards the Congress is shown by the statement of Justice Samuel Chase, himself a signer of the Declaration of Independence, twenty years later:

"I consider this as a declaration, not that the United States jointly, in a collective capacity, were independent states, &c but that each of them was a sovereign and independent State, that is, that each of them had a right to govern itself by its own authority, and its own laws, without any control from any other power upon earth."

For want of an efficient central government, the civil administration of the infant nation was marked by a weakness and incapacity that defeated Washington's plans and nearly broke his spirit. His ever diminishing army was the victim of the gross incapacity of an impotent government. The soldiers came and went, not as the general commanded, but as the various colonies permitted. The tragedy of Valley Forge, when the little army nearly starved to death, and literally the soldiers could be tracked over the snows by their bleeding, unshod feet, was not due to lack of clothing and provisions, but to the gross incapacity of a headless government that, if

it had had the wisdom to act, lacked the authority. As Washington wrote in 1780:

"We are without money and have been so for a great length of time; without provisions and forage, except what is taken by impress; without clothing, and shortly shall be (in a measure) without men. In a word, we have lived upon expedients till we can live no longer, and it may be truly said that the history of this war, is a history of false hopes and temporary devices, instead of system, and economy which results from it.

If we mean to continue our struggles we must do it upon an entire new plan. We must have a permanent force, not a force that is constantly fluctuating and sliding from under us as a pedestal of ice would do from a statue in a summer's day, involving us in expense that baffles all calculation. We must at the same time contrive ways and means to aid our taxes by loans, and put our finances upon a more certain and stable footing than they are at present. Our civil government must likewise undergo a reform—ample powers must be lodged in Congress as the head of the Federal union, adequate to all the purposes of war. Unless these things are done, our efforts will be in vain, and only serve to accumulate expense, add to our perplexities, and dissatisfy the people without a prospect of obtaining the prize in view."

The situation was one of chaos. The colonies recruited their own contingents, paid such taxes as they pleased, which grew increasingly less, and the Congress had no coercive power to enforce its policies, either with reference to internal or external affairs.

This situation was so clearly recognized that immediately after the Declaration of Independence on July 4, 1776, the draft of a constitution was proposed to give the central government more effective power; but, although the necessity was manifest and most urgent, the so-called Articles of Confederation were not finally adopted until March, 1781, when the war was nearly over. In the meanwhile the conduct of the war was under the direction of a Congress, which had only per-

suasive authority, representing not a country but an aggregation of thirteen sovereign and independent States, taking some measures to carry on the war, it is true, but exercising no direct authority over individuals and securing the co-operation of the several States only by favour and not of legal right. Washington summed up the whole tragedy and its cause in one sententious phrase: "Influence is not government."

The Articles, which had been considered by Congress at tedious length, were submitted to the States for ratification in November, 1777. In urging the States to grant their approval, Congress said:

"Hardly is it to be expected that any plan, in the variety of provisions essential to our union, should exactly correspond with the maxims and political views of every particular state. Let it be remembered, that, after the most careful enquiry and the fullest information, this is proposed as the best which could be adapted to the circumstances of all; and as that alone which affords any tolerable prospect of a general ratification."

Many of the States ratified the Articles of Confederation within a few months after their proposal, but it was understood that consent by the legislatures of all the States was essential, and the consent of the thirteenth State, Maryland, was not secured until March, 1781. That small State remained long aloof, not because of any objection to the general scheme of government which would be established by the Articles but in order to gain her point that all of the Northwest Territory, out of which the great States of Ohio, Indiana, Illinois, Michigan and Wisconsin have since been formed, should be ceded to the United States. When convinced that this would be done—and it was most assuredly to the interest of the future nation that it should be done—Maryland tardily ratified the Articles of Confederation.

As the result proved, the Articles themselves marked only a very small advance over the existing *de facto* government, important as even that advance was, for the constituent States were still too jealous of each other and too hostile to

the creation of a central government to form a truly effective government. The founders of the Republic could only learn from their errors, but it is their great merit that they had the ability to profit in the stern school of experience, of which Franklin has said that it is a "dear school, but fools will learn in no other."

Happily, the founders of the Republic were not fools, but exceptionally wise men, and while they did not, as Gladstone seems to intimate, have the inspired wisdom to develop an adequate Constitution by sheer intuition unaided by experience, they did have the ability to make of their very errors the stepping-stones to a higher destiny.

By the Articles of Confederation, which, as stated, became effective in 1781, the conduct of foreign affairs was vested in the new government, which was also given the power to create admiralty courts, regulate coinage, maintain an army and navy, borrow money, and emit bills of credit, but the great limitation was that in all other respects the constituent States retained absolute power, especially with reference to commerce and taxation. All that the central government could do was to requisition the States to furnish revenues, and the States were then left to impose the taxes and, if necessary, to enforce their payment in their own way, with the inevitable result that they vied with each other in the struggle to evade them. The Confederation had no direct power over the citizens of the several States. Moreover, the Congress could not levy any taxes, or indeed pass any measure unless nine out of the thirteen States agreed, and the Constitution could not be amended except by unanimous vote. While the Congress could select a presiding officer to serve for one year, yet he had no real executive authority. During the recess of the Congress, a committee of thirteen, consisting of one delegate from each State, had *ad interim* powers, but not greater than the Congress, which they represented.

Such a government could not long have served any people satisfactorily. Such success as it had in America was due to the spirit of co-operation prevailing at the outbreak of the war, which made the States willing to act together from considera-

tions of self-preservation, although they were wholly unwilling to accept a strong central government as a permanent institution. Two circumstances alone saved the infant nation from dying still-born; one was the invaluable aid of France, and the other the personality of George Washington. This great leader, one of the noblest that ever "lived in the tide of time," fully justified the noble tribute paid to him by the greatest of the Victorian novelists in his *Virginians*:

"What a constancy, what a magnanimity, what a surprising persistence against fortune! . . . Washington, the chief of a nation in arms, doing battle with distracted parties; calm in the midst of conspiracy; serene against the open foe before him and the darker enemies at his back; Washington, inspiring order and spirit into troops hungry and in rags; stung by ingratitude, but betraying no anger, and ever ready to forgive; in defeat invincible, magnanimous in conquest and never so sublime as on that day when he laid down his victorious sword and sought his noble retirement—here, indeed, is a character to admire and revere; a life without a stain, a fame without a flaw."

A year after the Articles of Confederation had been adopted, the war came to an end by a preliminary treaty on November 30, 1782.

CHAPTER II

THE LAST DAYS OF THE CONFEDERATION

"Where there is no vision, the people perish."

—Proverbs xxix, 18.

NOW follows the least known chapter in American history. It was a period of travail, of which the Constitution of the United States and the present American nation were born. The government slowly succumbed from its own weakness to its inevitable death. Only the shreds and patches of authority were left. Gradually the union fell apart. Of the Continental Congress only fifteen members, representing seven colonies, remained to transact the affairs of the new nation. The army, which previously to the termination of the war had dissolved by the hundreds, was now unpaid and in a state of revolt. Measure after measure was proposed in Congress to raise money to pay the interest on the bonded indebtedness, then in arrears, and to provide funds for the most necessary expenses, but these failed in Congress for the want of the necessary nine votes or, if enacted, the States treated the requisitions with indifference. The currency of the United States had fallen almost as low as a German mark, and men derisively plastered the walls of their houses with the worthless paper of the Continental Congress. Adequate authority no longer remained to carry out the terms of the treaties with England and France, and they were nullified by the failure of the infant nation to comply with its own obligations and the consequent refusal of the other contracting parties to comply with theirs. The government made a call upon the States to raise \$8,000,000 for the most vital needs, but only \$400,000 was actually received. Then Congress asked the States to vest in it the power to levy a tax of five per cent.

on imports for a limited period, but, after waiting two years for the action of the States, less than nine concurred. The States were then asked to pledge their own internal revenue for twenty-five years to meet the national indebtedness, but this could only be done by unanimous consent, and while twelve States concurred, Rhode Island—the *enfant terrible* of the Colonies—refused and the measure was defeated. The impotence of the Confederation can be measured by the fact that in the last fourteen months of its existence its receipts were less than \$400,000, while the interest on the foreign debt alone was over \$2,400,000, and that on the internal debt was five-fold greater. It was again the infinite folly of the *liberum veto* which, prior to the great partition, condemned Poland to chronic anarchy.

On June 9, 1783, word came that a few hundred foot soldiers, mutinous because they had been so long unpaid, were on their way to Philadelphia to demand relief, doubtless influenced by the fact that at the urgent request of Washington's Congress had already granted a measure of relief to the officers of the army. They stacked their arms in front of the State House, where the Congress was then sitting, threw stones at the building, and refused to disband, when requested by Col. Alexander Hamilton, as the representative of the Congress, to do so. Col. Hamilton was startled by the menacing attitude of the mutineers and he returned to the Congress and grimly told them to think of "eternity," as he did not believe that they had "more than an hour to live."* When Congress appealed to the government of Pennsylvania for protection, it was advised that the Pennsylvania militia was likewise insubordinate. The Congress then hastily fled by night and became a fugitive, first holding its sessions in Princeton and later in New York, where it sat during the Constitutional Convention.

In the absence of any government and in the period of general prostration it was not unnatural that the spirit of bolshevism grew with alarming rapidity. It even permeated the officers of the Army. Hamilton wrote to his former commander-in-chief:

* Watson's Annals.

"It appears to be a prevailing opinion in the army, that the disposition to recompense their services, will cease with the necessity for them; and that, if they once lay down their arms, they part with the means of obtaining justice. The claims of the army, urged with moderation, but with firmness, may operate on those weak minds which are influenced by their apprehensions more than by their judgments, so as to produce a concurrence in the measures which the exigencies of affairs demand."

He added that it would be difficult "to keep a complaining and suffering army within the bounds of moderation." In March, 1783, an anonymous communication was sent to Washington's officers to meet in secret conference to take some action, possibly to overthrow the government. It reminded the officers of the neglect with which they had been treated and urged them to demand redress. It forcefully said:

"After seven long years your suffering courage has conducted the United States of America through a doubtful and bloody war; and peace returns to bless—whom? A country willing to redress your wrongs, cherish your worth, and reward your services? Or is it rather a country that tramples upon your rights, disdains your cries, and insults your distresses? If such be your treatment, while the swords you wear are necessary for the defense of America, what have you to expect when those very swords, the instruments and companions of your glory, shall be taken from your sides, and no mark of military distinction left but your wants, infirmities and scars? If you have sense enough to discover and spirit to oppose tyranny, whatever garb it may assume, awake to your situation. If the present moment be lost, your threats hereafter will be as empty as your entreaties now. *Appeal from the justice to the fears of government, and suspect the man who would advise to longer forbearance.*"

A copy fell into Washington's hands in the nick of time and, while he forbade the assemblage of the officers under the anonymous call, he himself directed the officers to assemble at a later date. He unexpectedly appeared at the meeting and,

being no speaker, he had reduced his appeal to writing. As he adjusted his spectacles to read it, he pathetically said: "I have grown gray in your service, and now find myself growing blind."

He then made a touching appeal to them not to increase by example the spreading spirit of revolt. The very sight of their old commander, who had himself refused to accept any payment whatever for all of his services throughout the war, turned the hearts of the revolting element and the officers remained loyal to their noble leader. Washington, it may be added, followed his appeal to his officers by an urgent letter to Congress and in spite of the great difficulties under which Congress then labored he secured from it some measure of relief.

Where the spirit of disaffection was thus found in high places it naturally prevailed more widely among the masses who had been driven to frenzy by their sufferings. This culminated in a revolt in Massachusetts under the leadership of an old soldier named Shays, and it spread with such rapidity that not only did one-fifth of the people join in attempting to overthrow the remnant of established authority in Massachusetts, but it rapidly spread to other States. The offices of government and the courthouses were seized, jails were thrown open and prisoners released, the collection of debts was forbidden, and private property was forcibly appropriated to meet the common needs. When this rebellion was finally suppressed, the only person who was punished was the governor who had enforced the laws against all opposition, for the voters of Massachusetts refused to re-elect him.

Chaos had come again. It filled Washington's heart with disgust and despair. After surrendering his commission to the pitiful remnant of the government he had retired to Mount Vernon, and for a time declined to act further as the leader of his people. Thus, in October, 1785, he wrote James Warren, of Massachusetts:

"The war, as you have very justly observed, has terminated most advantageously for America, and a fair

field is presented to our view ; but I confess to you freely, my dear sir, that I do not think we possess wisdom or justice enough to cultivate it properly. Illiberality, jealousy, and local policy mix too much in all our public councils for the good government of the Union. In a word, the Confederation appears to me to be little more than a shadow without the substance, and Congress a nugatory body, their ordinances being little attended to. . . . By such policy as this the wheels of government are clogged, and our brightest prospects, and that high expectation which was entertained of us by the wondering world, are turned into astonishment; and, from the high ground on which we stood, we are descending into the vale of confusion and darkness."

Again he wrote to George Mason:

"I have seen without despondency, even for a moment, the hours which America has styled its gloomy ones, but I have beheld no day since the commencement of hostilities that I thought our liberties in such imminent danger as at present. Indeed, we are verging so fast to destruction that I am feeling that sense to which I have been a stranger until within these three months."

Again in 1786 he writes:

"I think often of our situation, and view it with concern. From the high ground we stood upon, from the plain path which invited our footsteps, to be so fallen, so lost, is mortifying; but everything of virtue has, in a degree, taken its departure from our land. . . . What, gracious God, is man that there should be such inconsistency, and perfidiousness in his conduct! It was but the other day that we were shedding our blood to obtain the Constitutions under which we now live, and now we are unsheathing our swords to overturn them. The thing is so unaccountable that I hardly know how to realize it or to persuade myself that I am not under an illusion of a dream."

So desperate were the times that then, as always in a crisis, there was an insistent demand for a dictator. Washington told of this spirit in a letter which he wrote to John Jay in August, 1786:

"What astonishing changes a few years are capable of producing! I am told that even respectable characters speak of a monarchical form of government without horror. From thinking proceeds speaking; thence to acting is often but a single step. But how irrevocable and tremendous! What a triumph for our enemies to verify their predictions! What a triumph for the advocates of despotism to find that we are incapable of governing ourselves, and that systems founded on the basis of equal liberty are merely ideal and fallacious! Would to God that wise measures may be taken in time to avert the consequences we have but too much reason to apprehend."

In the fall of the same year General Knox wrote to Washington on the danger of insurrection and gave this graphic description of the rapid spread of that baleful spirit, which we now call "bolshevism":

"The people who are the insurgents [Shaysites] have never paid any, or but very little taxes—but they see the weakness of government. They feel at once their own poverty, compared with the opulent, and their own force, and they are determined to make use of the latter, in order to remedy the former. Their creed is 'That the property of the United States has been protected from the confiscations of Britain by the joint exertions of all, *and therefore ought to be the common property of all.* And he that attempts opposition to this creed is an enemy to equity and justice, and ought to be swept from off the face of the earth.' In a word they are determined to annihilate all debts public and private and have agrarian laws, which are easily effected by means of unfunded paper money which shall be a tender in all cases whatever.

The number of these people may amount in Massachusetts to about one fifth part of several populous coun-

ties, and to them may be collected, people of similar sentiments, from the states of Rhode Island, Connecticut, and New Hampshire so as to constitute a body of 12 or 15000 desperate & unprincipled men. They are chiefly of the young and active part of the community, more easily collected than perhaps kept together afterwards—but they will probably commit overt acts of treason which will compel them to embody for their own safety—once embodied they will be constrained to submit to discipline for the same reason. Having proceeded to this length for which they are now ripe, *we shall have a formidable rebellion against reason, the principle of all government, and the very name of liberty.* This dreadful situation has alarmed every man of principle and property in New England. They start as from a dream, and ask what has been the cause of our delusion? what is to afford us security against the violence of lawless men? Our government must be braced, changed, or altered to secure our lives and property. We imagined that the mildness of our government and *the virtue* of the people were so correspondent, that we were not as other nations requiring brutal force to support the laws—but we find that we are men, actual men, possessing all the turbulent passions belonging to that anim[al] and that we must have a government proper and adequate for him. The people of Massachusetts for instance, are far advanced in this doctrine, and the men of reflection, & principle, are determined to endeavour to establish a government which shall have the power to protect them in their lawful pursuits, and which will be efficient in all cases of internal commotions or foreign invasions. They mean that liberty shall be the basis, a liberty resulting from the equal and firm administration of the laws. They wish for a general government of unity as they see the local legislatures must naturally and necessarily tend to retard and frustrate all general government.”

Early in the following year, Madison, who was then in New York, wrote to Edward Pendleton on the urgent necessity for a stronger government:

"In general I find men of reflection much less sanguine as to a new than despondent as to the present system. Indeed the present system neither has nor deserves advocates; and if some very strong props are not applied will quickly tumble to the ground. . . . If the approaching Convention should not agree on some remedy, I am persuaded that some very different arrangement will ensue. The late turbulent scenes in Massachusetts & infamous ones in Rhode Island, have done inexpressible injury to the republican character in that part of the United States; and a propensity towards Monarchy is said to have been produced by it in some leading minds. The bulk of the people will probably prefer the lesser evil of *a partition of the Union into three more practicable and energetic Governments*. The latter idea I find after long confinement to individual speculations & private circles, is beginning to show itself in the newspapers."

Another correspondent wrote to Washington in March, 1787:

"The alarming flame in Massachusetts seems nearly extinguished, but if the subsequent measures of that State respecting the insurgents should be severe, amounting to *death*, confiscation, or disfranchisement, the consequence may be bad, as tending to rekindle the flame. Shall I tell you in *confidence*, I have now twice heard, nor from low authority (some principal men of that State) begin to talk of wishing one general *Head* to the Union, in the room of Congress!"

Truly, as Washington had said, the difficulty was to steer "between Scylla and Charybdis," the demand for a dictator on the one hand and the movement towards disintegration into three or more nations, on the other.

It was, however, the darkest hour before the dawn. Washington was greatly interested in the development of western lands and, to that end, was anxious to secure increased freedom for transportation along the Potomac River. Under his leadership the States of Virginia and Maryland were induced to appoint commissioners. They met at Mount Vernon in

1785, drafted an agreement between the two States concerning commerce along this common waterway, and united in asking the State of Pennsylvania to permit the free navigation of branches of the Ohio, so that transportation and commerce should not be impeded at the head of navigation on the Potomac River but extend on over the Ohio River and its branches into the Northwest Territory. The commissioners also recommended their respective States to adopt by agreement uniform legislation dealing with commercial regulations, the currency and import duties. The State legislatures went still further and on recommendation of the Virginia legislature the Governor of that State invited the other thirteen States to send representatives to a convention to be held at Annapolis, Maryland, in September, 1786, to consider how far the States themselves could agree upon common regulations of commerce.

At the appointed time the delegates assembled from Virginia, Pennsylvania, Delaware, New York and New Jersey, and finding themselves too few in number to achieve the great objective, the conference contented itself by issuing another call, probably drafted by Alexander Hamilton (then under thirty years of age), to all the States to send delegates to a convention to be held in Philadelphia on the second Monday in May, 1787, "to take into consideration the situation of the United States, to devise such further provisions as should appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union."

The dying Congress tardily approved of this suggestion, but finally, on January 21, 1787, grudgingly adopted a resolution that—

"It is expedient that on the second Monday in May next a convention of delegates, who shall have been appointed by the several States, be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall, when agreed to in Congress and conformed to by the States, render the Federal Constitution adequate to

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the exigency of the government and the preservation of the union."

It will be noted by the italicized portions of the resolution that this impotent body thus vainly attempted to cling to the pitiful shadow of its authority by stating that the proposed constitutional convention should merely revise the worthless Articles of Confederation and that such amendments should not have validity until adopted by Congress as well as by the people of the several States. Happily this mandate was disregarded and the Convention was formed, and proceeded to create a new government with a new Constitution.

CHAPTER III

THE GREAT CONVENTION

It is a novelty in the history of a society to see a calm and scrutinizing eye turned upon itself, when apprised by the legislature that the wheels of government are stopped; to see it carefully examine the extent of the field and patiently wait for two years until a remedy was discovered, which it voluntarily adopted, without having ever wrung a tear or a drop of blood from mankind."

—De Tocqueville.

NOW follows a notable and yet little known scene in the drama of history. It reveals a people who, without shedding a drop of blood, calmly and deliberately abolished one government, substituted another, and erected it upon foundations which have hitherto proved enduring. Even the superstructure slowly erected upon these foundations has suffered little change in the most changing period of the world's history. There have been but few additions and, except for the Amendments immediately following the Civil War, only the most recent additions have made notable changes from the plans of the original architects. The Constitution is to-day, not a ruined Parthenon, but rather as one of those Gothic masterpieces, against which the storms of passionate strife have beaten in vain. The foundations were laid at a time when disorder was rampant and anarchy widely prevalent.

As already shown in the first chapter, credit was gone, business paralyzed, lawlessness triumphant. Not only between class and class, but between State and State, there were acute controversies and an alarming disunity of spirit. To weld thirteen jealous and discordant States, demoralized by

an exhausting war, into a unified and efficient nation against their wills, was a seemingly impossible task. Frederick the so-called Great had said that a federal union of widely scattered communities was impossible. Alexander Hamilton, in his principal speech in the Convention, expressed the same doubt with greater emphasis. All the delegates were similarly dubious as to a successful accomplishment of their great work. Its final and successful accomplishment has blinded the world to the essential difficulty of the problem.

The time was May 25, 1787; the place, the State House in Philadelphia, a little town of not more than 30,000 people, and, at that time, as remote, measured by the facilities of communication, to the centres of civilization as is now Vladivostok.

The Convention met in a hall about fifty feet square, whose walls were already eloquent with sacred memories. There the second Continental Congress had met and there the Declaration of Independence had been signed. The delegates could from time to time hear the solemn reverberations of the old bell, which from the belfry had "proclaimed liberty throughout all the land unto all the inhabitants thereof." The hall barely sufficed for the maximum attendance.

The *dramatis personæ* in this drama, though few in numbers, were, however, worthy of the task.

Seventy-two leading men in the colonies had originally been offered or given credentials, for each State was permitted to send as many delegates as it pleased, inasmuch as the States were to vote in the Convention as units. From each of the thirteen States except Rhode Island, which was unrepresented in the Convention and did not ratify the Constitution until 1790, delegates had been chosen by the State legislatures. Rhode Island's recalcitrancy surprised no one. It was in the remorseless grip of demagogues. It, however, angered Washington, who spoke of its disloyalty as "scandalous." The greatest actual attendance of the delegates from the twelve colonies was fifty-five, and at the end of the Convention a saving remnant of only thirty-nine remained to finish a work which was to immortalize its participants.

While this notable group of men contained a few merchants,

financiers, farmers, doctors, educators, and soldiers, of the remainder, at least thirty-one were lawyers, and of these many had been justices of the local courts and executive officers of the commonwealths. Four had studied in the Inner Temple, at least five in the Middle Temple, one at Oxford under the tuition of Blackstone and two in Scottish Universities. Few of them were inexperienced in public affairs, for of the original fifty-five members, thirty-nine had been members of the first or second Continental Congresses, and eight had already helped to frame the constitutions of their respective States. At least twenty-four were college graduates, of whom nine were graduates of Princeton, three of Yale, two of Harvard, two of the College of Philadelphia (now the University of Pennsylvania), four of William and Mary, and one each from the Universities of Oxford, Columbia, Glasgow, and Edinburgh. At least three were professors of law in universities and one was President of Columbia College. A few already enjoyed world-wide fame, notably Doctor Franklin, possibly the most versatile genius of the eighteenth century and universally known and honored as a scientist, philosopher, and diplomat, and George Washington, whose fame, even at that day, had won the admiration of the world as that of a true and unselfish leader of men.

It was a convention of comparatively young men, the average age being little above forty. Franklin, the oldest member, was then eighty-one. Thirty-three years before this assemblage he had drafted the plan of union proposed by the Albany Convention; and twenty-one years later he had drafted the plan on which the Articles of Confederation were based. Now he was giving the best of his remaining strength to aid in the formation of a "more perfect union." He did not shrink from the task, although he was suffering from a painful malady, that made it difficult for him to stand upon his feet and address the Convention. His potent pen did not fail him and his influence proved of inestimable value. With the exception of Franklin and Washington, most of the potential personalities in the Convention were under forty. Thus, Dayton, of New Jersey, the youngest member of the Convention, was only

twenty-seven; James Madison, who had taken such an active part in securing the conference between Virginia and Maryland and the Annapolis convention which grew out of that conference, and who contributed so largely to the plan that he is sometimes called "The Father of the Constitution," was thirty-six. Edmund Randolph, who opened the discussion by presenting the Virginia plan, was only thirty-four. Charles Pinckney, who, unaided, submitted the first concrete draft of the Constitution, was only twenty-nine, and Alexander Hamilton, who was destined to take a leading part in securing its ratification by his powerful oratory and his very able commentaries in the Federalist papers, was only thirty.

Above all they were a group of gentlemen of substance and honor, who could debate for four months during the depressing weather of a hot summer without losing their tempers, except momentarily—and this despite vital differences—and (who showed that genius for toleration and reconciliation of conflicting views inspired by a common fidelity to a great objective that is the highest mark of statesmanship). These men, chosen by the State legislatures, represented the spirit of representative government at its best in avoiding the cowardice of time-servers and the low cunning of demagogues. All apparently were inspired by a fine spirit of self-effacement. Selfish ambition was conspicuously absent. They differed, at times heatedly, but always as gentlemen of candor and honor. The very secrecy of their deliberations, of which I shall presently speak, is ample proof how indifferent they were to popular applause and the *civium ardor prava jubentium*. (See Appendix VI, Note 2.)

The men who sat in the convention hall throughout those hot summer months were not mere theorists. They met to provide remedies for evils which had been already experienced by the country and to organize a practical system of government. Madison afterwards said in The Federalist that "the great principles of the Constitution proposed by the Convention may be considered less as absolutely new, than as the expansion of principles which are found in the Articles of Confederation;" and many years afterwards, in a paper which was

apparently written to serve as an introduction to his Debates of the Convention, he enumerated the evils from which the country had suffered and said :

“Such were the defects, the deformities, the diseases and the ominous prospects, for which the Convention were to provide a remedy, and which ought never to be overlooked in expounding and appreciating the constitutional charter, the remedy that was provided.”

The immediately antecedent cause of the Constitutional Convention was undoubtedly the necessity, in the interests of commerce, of ending the commercial warfare between the States, due to their conflicting regulations of commerce. These had thrown the business of the infant nation into prostrating confusion. It is therefore true that the Constitution was born of an economic travail, and that its merits were largely determined by the commercial necessities of the American people. It was largely the work of men of affairs; for most of the members of the Convention were influential, and, for the times, well-to-do professional and business men, who felt that, if their property interests were to be safe-guarded and prosperity were to return after the panic of 1785, there must be, not merely freer commercial intercourse between the States, but also greater security to the rights of property against the disintegrating social tendencies, due to the distress among the masses, which, then as now, inevitably follows a depreciated currency.

Behind the antecedent necessity of ending the bitter commercial warfare between the States, was the anterior necessity of those who had property interests to protect themselves against that spirit of social revolt which we today call “bolshevism.”

This economic explanation of the genesis of the Constitution is well expressed by James Madison in the tenth number of *The Federalist*, as follows :

“The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable ob-

stacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of society into different interests and parties. . . . The most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government."

General Washington, punctual as always, arrived at the time fixed for the assembling of the Convention, and this notwithstanding the fact that the weather had been so bad and the roads so poor that other delegates had been unable to reach Philadelphia on time. He had left Mt. Vernon on May 9th, and arrived in Philadelphia Sunday evening, May 13th. It is probable that his thoughts, while riding along the rough roads and through the scarcely broken forests, were sad ones. His letters, some of which I have already quoted, show that after the triumph of Yorktown, he was increasingly despondent. It was for him a period of disillusion. He had hazarded his property, his good name, and his very life for the cause of the Colonies, and had refused to accept any compensation for his inestimable services. To him, it seemed that his reward was the revelation of a country that was quite incapable of governing itself. To his orderly mind, lawlessness was abhorrent, and the spectacle of an impotent government filled him with despair. He and others may well have

thought, during the dark hours of this critical period, that it might have been better to have paid the "tuppenny" stamp tax on tea, even at the sacrifice of a constitutional principle, rather than conduct a weary struggle which seemed destined to terminate only in anarchy.

When invited to go to the Constitutional Convention, he declined, giving as his excuse that he had previously declined the invitation of his own comrades-in-arms, the Society of the Cincinnati, to come to Philadelphia and be its President. Only the earnest intercession of Randolph and Madison and the imperative sense of duty, which always characterized him, finally induced him to make the journey, and, as his letters show that he had little expectation that any good would result, his journey to Philadelphia could not have been, at first, an agreeable one.

There were other reasons that had indisposed Washington to attend the Philadelphia Convention. The call for that Convention had been issued by individuals upon their own responsibility and had not yet received the sanction of Congress. While some of his friends urged him to attend the Convention, others advised him that if he, as the former Commander-in-Chief of the Army, were to attend a convention in Philadelphia, which had not been summoned by the only existing government, that it would expose him to the imputation of participating in a seditious attempt to overthrow the existing government. This consideration had great weight with Washington, and his scruples were only relieved when Congress tardily sanctioned the meeting in Philadelphia.

Other troubles made it equally inconvenient for him to attend. In a letter dated April 27, 1787, to Henry Knox, Washington writes that he had been so afflicted with rheumatism for the last six months that he had been carrying his arm in a sling for the last ten days, and that he had just been called to the bedside of a sister who was dying.

If these troubles were not enough, he was also inconvenienced by lack of ready money, for although he was probably the richest land owner in America his liquid resources were not

very great, for on the eve of the Convention he wrote on May 7th to a relative:

"I need not tell you, because a moment's recurrence to your own accounts will evince the fact, that there is no source from which I derive more than a sufficiency for the daily calls of my family, except what flows from the collection of old debts, and scanty and precarious enough, God knows this is. My estate for the last 11 years has not been able to make both ends meet. I am encumbered now with the deficiency. I mention this for no other purpose than to show that, however willing, I am not able to pay debts unless I could sell land, which I have publicly advertised without finding bidders."

With all these difficulties Washington did not hesitate to make the journey to Philadelphia, and that that journey was no idle task can be shown from his itinerary. On May 9th he left Mount Vernon and arrived that night at Bladensburg with a violent headache. At one o'clock the next day he was in Baltimore. On the next day he reached Havre de Grace, but could not cross the river, "the wind being turbulent and squally." The next day he crossed the Susquehanna and dined that night at Wilmington. On the next day, the fourth day from his departure, he reached Chester and was escorted to Philadelphia.

As he came towards the more settled portions of Pennsylvania, his spirits were lightened by the affectionate welcome that he received from town to town. When he reached Chester, he was greeted by its foremost citizens, who escorted him to Gray's Ferry, and there some cavalry from Philadelphia met him and escorted him, as the evening light was failing, into that city. On his arrival, he passed between a group of his old artillery officers, who respectfully stood at attention. When the people learned that George Washington had arrived, the bells of the churches were rung and the worshippers streamed forth into the streets to acclaim him, as his cavalcade clattered down its chief highway. That this affectionate greeting deeply touched Washington is indicated by his diary, which ordinarily

is so matter-of-fact that it never reveals any touch of sentiment, but he tells in the entry of May 13, 1787, "On my arrival the bells were chimed."

He was received "with the acclamations of the people, as well as the more sober marks of affection and veneration which continue to be felt for his character." * For him, the darkest hours had passed. Mt. Vernon had been for him, in recent years, a Gethsemane, in which he felt "sweat, like unto great drops of blood." But with these manifestations of popular affection, he must have felt that he was again coming to the rescue,—even as in the darkest hours of the Battle of Monmouth, he had galloped down the Freehold road to rally the fleeing squadrons of the Continentals.

On his arrival and finding that few delegates from other States had arrived, Washington, in expressing his disgust at the fact that only Virginia and Pennsylvania were yet represented by delegates, added :

"These delays greatly impede public measures and serve to sour the temper of the punctual members, who do not like to idle away their time."

Presumably Washington, who at times was irascible, was speaking of himself and voicing his own annoyance at the fact that although he, suffering keenly from rheumatism, could traverse the long distance over almost impassable roads from Mount Vernon to Philadelphia and arrive on time, the delegates from adjacent States, like New York and New Jersey, could not show a like respect for the Convention.

Ever ceremonious, Washington at once repaired to Doctor Franklin's home to pay his respects. It is to be regretted that no Boswell was present to record their conversation, for it may well be that these two very eminent and also very practical men then made their plans to bring some measure of harmony out of the discordant elements that were about to gather.

* Letter of Madison to Jefferson, May 15, 1787.

CHAPTER IV

FRANKLIN GIVES A DINNER

As Poor Richard says: "The eye of a master will do more work than both his hands."

—Franklin.

FRANKLIN, as always the utilitarian philosopher, recognized that the current of good feeling frequently runs with the flow of the gastric juices, for he invited all the delegates who had reached Philadelphia on May 16, 1787, to dine with him. He had recently received a cask of porter, and this helped him do honor to the occasion. He says in a letter to Thomas Jordan, May 18, 1787:

"We have here at present what the French call *une assemblée des notables*, a convention composed of some of the principal people from the several States of our confederation. They did me the honor of dining with me last Wednesday, when the cask was broached, and its contents met with the most cordial reception and universal approbation. In short, the company agreed unanimously, that it was the best porter they had ever tasted."

Who could more fittingly play the host than the genial Doctor? Apart from the fact that he was then the chief executive of the Commonwealth, in which they were meeting, was the more potent consideration that he was regarded by his contemporaries as the greatest of Americans. He was then 81 years of age and nearing the end of a career, to which in variety and splendor there were few parallels in his century, or, indeed, in any century. For sixty years he had served the cause of America and, as he said, "the public, having as it were eaten my flesh, seems now resolved to pick

my bones." Franklin had been the leader of the Colonies when Washington, a young lad of sixteen years, was surveying the Fairfax estate, when Jefferson, Hancock, Patrick Henry, and Richard Henry Lee were little children in arms, and before Hamilton, Jay, and Marshall were even born. If to the guests at Franklin's dinner Washington seemed as Agamemnon, or "king of men" of their epic, Franklin was at once its Nestor and Ulysses. He was the first American to challenge the admiration of the world. When he went to France in his fur cap and homespun suit he was received with an enthusiasm which had never been equalled before and never surpassed since. When he stood in the presence of the ill-fated King and Queen of France in the proud court of Versailles he was the unconscious incarnation of democracy, and, although he little realized it, a Nemesis, whose influence was to cost that king his head and another the better part of his empire. If Shakespeare had America in his mind when he wrote "*The Tempest*," and had lived to see the matchless career of Franklin, he might have hailed the great philosopher as *Prospero*, for if Franklin could not, like *Prospero*, conjure "Jove's lightnings" and call "forth the mutinous winds, and 'twixt the green sea and the azured vault set roaring war," he had at least curbed the destructive fury of the lightning and solved its baffling mystery. His *Ariel* was his swift intelligence, his working wand, science; his magic mantle, imagination. To America he had indeed proved himself a wonder worker like *Prospero*. He had become one of the few "myriad-minded" men of all time. In diplomacy, a Talleyrand; in philanthropy, a Wilberforce; in physical science, a Newton; in philosophy, an Erasmus; in satire, a Swift; in style, an Addison; in power of narration, a Defoe. In all things a man, who "take him for all in all," we ne'er shall "look upon his like again." Rare Ben Franklin! To all of these extraordinary attainments were added a delightful urbanity, a spirit of broad toleration, and that fine spirit of common sense which consists in an instinctive appreciation of the nice relation of men and things to each other.

Such was the man who, knowing that a good dinner was often the solvent of many difficulties, invited the delegates,

who had arrived in Philadelphia, to dine with him on the eve of the Convention in his little home off Market Street.

The good Doctor's home fronted on a court at some distance from Market Street, then the main highway of Philadelphia. Surrounding it was a lawn upon which grew a very large mulberry tree. He had built an extension to the house to accommodate his library and philosophical apparatus, which was the largest in the colonies. We have a contemporary description in the diary of the Reverend Manasseh Cutler, who visited Franklin at that time. He tells us that the Doctor's library and study was "a very large chamber and high-studded. The walls are covered with bookshelves, filled with books; besides these there are four large alcoves, extending two-thirds the length of the chamber, filled in the same manner." With its philosophical apparatus, the Doctor's study was at once a library and a laboratory. The Doctor showed Cutler one of his many inventions, "a long, artificial arm and hand for taking down and putting up books on high shelves which are out of reach, and his great armchair, with rockers, and a large fan placed over it, with which he fans himself, keeps off the flies, while he sits reading, with only a small motion of the foot." About the library were scattered a "prodigious number of medals, busts, and casts in wax or plaster of Paris, which are the effigies of the most noted characters in Europe."

Dr. Cutler's description of the philosopher and his home also gives some idea of the conversation with which he entertained his guests on the occasion of the dinner to the visiting delegates, for the diary adds:

"He seemed extremely fond, through the course of the visit, of dwelling on philosophical subjects, and particularly that of natural history, while the other gentlemen were swallowed up with politics. * * * I was highly delighted with the extensive knowledge he appeared to have of every subject, the brightness of his memory, and clearness and vivacity of all his mental faculties, notwithstanding his age. His manners are perfectly easy, and everything about him seems to diffuse an unrestrained

freedom and happiness. He has an incessant vein of humor, accompanied with an uncommon vivacity, which seemed as natural and involuntary as his breathing."

And yet at that time Franklin was a very ill man. He was suffering acutely not only from a large stone in the bladder but from gout in both feet, so that it was difficult for him to stand upon his feet. When elected to the Constitutional Convention he expressed a doubt on account of his malady of being able to attend except infrequently, and yet at the end of the Convention he records the fact that he had attended without a single absence.* With him it was old age "frosty but kindly."

He writes on May 6, 1786:

"The companions of my youth are indeed almost all departed, but I find an agreeable society among their children and grandchildren. I have public business enough to preserve me from *ennui*, and private amusement besides in conversation, books, my garden, and cribbage. Considering our well-furnished, plentiful market as the best of gardens, I am turning mine, in the midst of which my house stands, into grass plots and gravel walks, with trees and flowering shrubs. Cards we sometimes play here, in long winter evenings; but it is as they play at chess, not for money, but for honor, or the pleasure of beating one another. This will not be quite a novelty to you, as you may remember we played together in that manner during the winter at Passy. I have indeed now and then a little compunction in reflecting that I spend time so idly; but another reflection comes to relieve me, whispering, *'You know that the soul is immortal; why then should you be such a niggard of a little time, when you have a whole eternity before you?'* So, being easily convinced, and, like other reasonable creatures, satisfied with a small reason, when it is in favor of doing what

* "The Convention finished the 17th instant. I attended the business of it five hours in every day from the beginning, which is something more than four months. You may judge from thence, that my health continues; some tell me I look better, and they suppose the daily exercise of going and returning from the Statehouse has done me good." (Letter to Mrs. Jane Mecom, dated Philadelphia, 20 Sept., 1787.)

I have a mind to, I shuffle the cards again, and begin another game."

Throughout his life he had indeed, with untiring energy and dauntless spirit, shuffled the cards of life and begun another game.

His guests at the pre-Convention dinner were largely the delegates from Virginia and Pennsylvania. Few others had yet arrived, and Franklin's dining-room could not accommodate more than twenty guests. As the representatives of these two leading States are fairly representative of the character of the other delegates, a fair estimate of the character of the Convention may be gained, if in imagination we look about Franklin's table and see who his guests were on that occasion.

On his right sat the best-loved American, George Washington. He was then 55 years of age. The hardships of a lifetime of open-air adventure and danger had told upon him, but he still stood six feet two, and clad in black velvet, emblematic of the elegance of his century, with his sword by his side and a powdered wig covering his grey hairs, and with that benignant expression that all his portraits reveal, he was a true "king of men." It is easier to state the fact of his mastery than to analyze its causes. When the intrepid Kent said to the kingly Lear, "You have that in your countenance which I would fain call master—authority," he partly explained Washington's leadership in his day and generation. It may be said of him, as the greatest of Greek dramatists said of Hercules:

"'Oh, Iole, how did you know that Hercules was a God?' 'Because,' answered Iole, 'I was content the moment my eyes fell on him. When I beheld Theseus I desired that I might see him offer battle, or at least guide his horses in a chariot race, but Hercules did not wait for a contest; he conquered whether he stood or walked or sat or whatever thing he did.'"

Among the others gathered about Franklin's board was John Blair, of Virginia, a leader of its bar, who had become one

of its Judges. He was a man of substance and social standing, and, like Washington, an aristocrat of the planter type.

George Clymer, of Pennsylvania, was a merchant and banker of Philadelphia, and relatively to the times a man of large affairs. The tendency of his mind is shown by the fact that he believed that "a representative of the people was appointed to think *for* and not *with* his constituents."

Near him sat another conspicuous financier of Philadelphia, Thomas Fitzsimmons, a director in banks and insurance companies and an associate of Robert Morris in his financial affairs. He was a man of action and not of words, rarely spoke on the floor of the Convention, and shared with his fellow merchant, Clymer, a strong belief in a representative but not a direct democracy.

Jared Ingersoll was among the number, a graduate of Yale, who had entered the Middle Temple as a student and had now become, with the possible exception of James Wilson, the leader of the Philadelphia bar. Relatively to the times, he was a man of substantial wealth. A conservative by temperament, he shared the doubts of his fellow delegates (with the exception of Franklin) in the virtues of an unrestrained democracy.

Not the least able among Franklin's guests was a comparatively young man, James Madison, of Virginia, who was then only 36 years of age. A graduate of Princeton, he had been called to the bar, but had so little taste for the work of an active practitioner that, as one of the old-landed families of Virginia with large plantations and slaves, he preferred to give his leisure hours to the reading of history and the study of government. With the exception of Franklin and James Wilson, Madison was probably the most profoundly learned delegate to the Convention. He was a true scholar in politics. The Convention had no more useful or industrious member than he, and he would have laid posterity in his lasting debt if he had done nothing more than his painful and laborious transcription from day to day of the debates in the Convention. One of his associates said of him that if convincing is eloquence, Madison was the most eloquent of the Convention.

Another rich Virginia planter, who was present at the din-

ner, was George Mason, who was then 62 years of age. Apart from his rich holdings in Virginia lands and slaves, he, like Washington, had made large purchases of lands of great potential value in that unknown western region beyond the boundaries of the States. He was a man of considerable ability and saw with great clearness the possibilities involved in the Constitution as finally drafted. He subsequently became a bitter opponent of ratification, and his opposition was stimulated by his own property interests, which he regarded as imperilled by the Treaty Power of the Constitution and the new powers which were to be given to the Federal judiciary.

Somewhere scattered among Franklin's guests were the two Morris from Pennsylvania—Robert and Gouverneur. The former was the merchant prince and leading banker of his time and, unless his wealth was surpassed by that of Washington, the richest in the Colonies. His services to the patriot cause had been inestimable. He shared with Franklin the lasting honor of having made it possible for Washington to keep his armies in the field, for, if Franklin obtained from the Court of Versailles the invaluable French loans, Morris begged from house to house in Philadelphia for the necessary means to supply Washington's depleted army chest and thus made possible the crowning triumph of Yorktown. He was a daring speculator and little appreciated as he sat at Franklin's dinner that the time would come when his wealth would melt away like a snowdrift in spring and that he would spend his later days in a debtor's jail. He was possibly the closest friend of Washington during the convention days and the latter was his house guest for over four months. When Morris lay in his old age in a debtor's jail, Washington visited him and had his wife as his guest at Mt. Vernon.

The other Morris was then a young man 35 years of age. He was not a Pennsylvanian by birth, but was a scion of the powerful landed aristocracy of New York. A graduate of King's College (now Columbia), he had been called to the bar and then moved to Philadelphia to follow his profession. Whatever his practice may have been, he was associated with Robert Morris in many commercial ventures and had become

a rich man for the times. He was an aristocrat in temper and character, and his chief qualification was an incomparable gift of expression, a lucid style, to which we chiefly owe the matchless clarity of the Constitution. His clarity in expression, however, did not argue a similar clarity in reasoning, for he did not prove at all times a serviceable member of the Convention. Although a comparatively young man, he spoke more frequently than any other member of the Convention and was often more voluble than valuable. Indeed, he was afterwards charged by George Mason with an attempt at "steamroller" methods in the Convention. Morris was heart and soul for a powerfully centralized government. Mason records that on one day, before many members of the Convention had assembled, Morris moved an amendment, which would deny to the States the right to propose amendments to the Constitution. Its significance was not appreciated and the small number of Delegates accepted it.*

Of a different type was James McClurg, of Virginia, a distinguished physician of that State and a man of letters, who was at the time 40 years of age. He was a graduate of William and Mary College and had finished his training in his profession as a physician at the University of Edinburgh.

Another of the merchant class was Thomas Mifflin, of Pennsylvania, then 43 years of age. A graduate of the University of Pennsylvania (then the College of Philadelphia), he had

*"George Mason gave an account of the circumstance to Jefferson, who thus reports it:

"One morning Gouverneur Morris moved an instrument for certain alterations (not one-half the members yet come in). In a hurry and without understanding, it was agreed to. The committee (on style) reported so that Congress should have the exclusive power of proposing amendments. George Mason observed it on the report and opposed it. King denied the construction. Mason demonstrated it, and asked the committee by what authority they had varied what had been agreed. Gouverneur Morris then imprudently got up and said, By authority of the Convention, and produced the blind instruction before mentioned, which was unknown by one-half the house, and not till then understood by the other. They then restored it as it originally stood.'" Rowland, *Life of George Mason*, II, 178, 179.

Morris was a clever politician of the type that "would circumvent God." In June 1775, he wrote to Jay concerning his doings in New York, saying:

"I drew a long report for our committee, to which they could make no objections excepting that none of them could understand it."

shown a marked taste for the liberal arts, which had led him in his early manhood to visit Europe. At that time there were few manufactories in the United States, and Mifflin, who had become a general in the Revolutionary War, was a pioneer in developing manufactures in what is to become the greatest manufacturing nation of the world.

Three other distinguished guests on that occasion remain for comment. One was his Excellency the Governor of Virginia, Edmund Randolph. He could claim an aristocratic lineage and, like so many of this class in Virginia, he was the owner of several plantations, comprising 7,000 acres of land, which were worked by over 200 negro slaves. However, he was, as Washington found himself on occasion, land poor, but he regarded himself, as landed proprietors burdened with mortgages ordinarily do, as a man of considerable means. As the nominal head of the Virginia delegation, being its chief executive, he was to play a conspicuous part in the Convention and was destined to become the first Attorney General of the United States. His ending was not creditable.

Probably he found congenial company on that night with his fellow lawyer, James Wilson of Philadelphia. Wilson had been born in Scotland 45 years before, and shared with Jared Ingersoll the distinction of being a leader of the already famous Philadelphia bar. While the Convention numbered many lawyers, it is probable that James Wilson was the most learned jurist of them all. He was one of the few delegates who had in his library a large and varied collection of works on government. He was a professor of law in the University of Pennsylvania, and no one in the Convention saw more clearly the possibilities and the merits of the dual form of government which, largely through Wilson, was adopted. No speaker spoke more wisely or reasoned more accurately than this brusque Scotchman.

Next to Franklin, the oldest participant in the dinner was George Wythe, of Virginia. He was then 65 years of age and was regarded as the great preceptor of the Virginia bar. The veneration in which his professional attainments were held by his many distinguished pupils, like Jefferson, Madison,

Marshall, clearly indicate that Wythe was a profoundly learned lawyer and shared with James Wilson the distinction of being a jurist whose attainments would command respect in the Inns of Court or in the Sorbonne.

The men I have named and briefly described were probably all at Franklin's dinner and a few seats remained for other guests. The conjecture naturally suggests itself that Colonel Hamilton may have come over from New York to add his brilliant intellect to a remarkable gathering of men. If so, it must be remembered that the men there assembled would not have looked upon Hamilton as later generations have regarded him. Hamilton was then only 30 years of age, and while he was respected as a rising member of the New York bar and had won distinction as the Military Secretary to General Washington, he was still to his older colleagues a comparatively unknown and untried man. The imaginative supposition of later historians that he was the commanding and dominant figure in the Convention has nothing whatever to support it.

This detailed description of the guests at Franklin's dinner is given, as it is fairly typical of the character of the delegates from other States. It is true that the Virginia and Pennsylvania delegations were the ablest of any colony, but they differed in degree but not in kind from their associates. The other delegates were of the same class—mostly men of substance, character, and recognized social standing. In the best sense of the term it was an aristocratic gathering. Each colony had sent its best men, its leading lawyers and men of affairs, and rarely before in the history of any country, and rarely since, has a Congress been selected by the methods of a democracy which reached so high a watermark of excellence. It was representative government in its best estate.

The author can only wish that he and his readers could take Wells' "time machine" and retrace the 137 years that have elapsed since Doctor Franklin's dinner, enter the little dining-room and in imagination sit down with him and his guests. I doubt not that more was offered than the cask of porter.

The men of that day were heavy drinkers, and if the genial Doctor's guests on this occasion, or later the Constitutional Convention, had suspected the possibility of the Eighteenth Amendment, the Convention would probably have adjourned *sine die*.*

It may well be assumed that over the walnuts and the wine, and as Madeira (in which later Franklin wished to be embalmed) was passed around the table, the old Doctor entertained his company with many a story of his recent experiences in Paris during his eventful years at Passy. However, the dinner had a serious purpose, and it is altogether unlikely that the only flow of reason was that of wit.

One invariable ceremonial of an eighteenth century dinner was certainly not wanting on that occasion; for, in those days of gracious formalities, a dinner, especially of a public nature as that of Franklin was, would have been wholly incomplete if the health of the various guests, or at least of the chief guests, was not proposed and drunk in flowing wine. To omit this, would have been as unusual as in this day to neglect an adieu at the end of any formal social function.

It is easy to guess which were the guests of honor on that occasion. The host of the dinner was the Chief Executive of Pennsylvania (then called its President), and the most natural guest to propose his health was General Washington. It would have been equally unusual if, in response, Dr. Franklin, had not proposed the health of the best loved of all Americans, the late Commander-in-Chief.

How each clothed the expression of good-will in words, we do not now know; but the underlying sentiment can be readily imagined from the sentiments which these two great men and

* As to the volume and variety of beverages in those days, there is an illustration in a bill which was rendered against the City of New York by the proprietors of Fraunce's Tavern, in the City of New York, for a dinner given at the Tavern in September, 1783, by the Governor of New York to General Washington and the French Ambassador. The bill recites that there were 120 present and it discloses that they consumed 136 bottles of Madeira, 36 bottles of port, 60 bottles of English beer, 30 bowls of flowing punch, and were further charged with the wreckage of 60 glasses and 8 broken decanters.

lifelong friends exchanged when, a few years later, Franklin lay on his deathbed. To Washington, Franklin wrote:

"I am now finishing my eighty-fourth year, and probably with it my career in this life; but in whatever state of existence I am placed in hereafter, if I retain any memory of what has passed here, I shall with it retain the esteem, respect, and affection, with which I have long been, my dear friend, yours most sincerely."

In replying to this touching farewell of an old friend, Washington wrote:

"If, to be venerated for benevolence, if to be admired for talents, if to be esteemed for patriotism, if to be beloved for philanthropy, can gratify the human mind, you must have the pleasing consolation to know that you have not lived in vain. And I flatter myself that it will not be ranked among the least grateful occurrences of your life to be assured that, so long as I retain my memory, you will be recollected with respect, veneration, and affection by your sincere friend."

"There were giants in those days," and these two superlatively great men were great also in the generous appreciation which each felt for his rival in fame.

CHAPTER V

THE PRELIMINARIES

"Dimidium facti, qui cæpit, habet."

—Horace.

IN all public bodies, there are two kinds of men: the first do the talking, and the others do the working. Each kind of work has its value; for it is true of public bodies as of individuals—to quote Lord Bacon's famous epigram—that "reading maketh a full man; writing, an exact man; and conference, a ready man." And therefore they serve who study the wisdom of the past and synthesize it in written form; and they also serve who, in the conflict of mind and mind through debate, clarify thought by separating the disputable from the indisputable.

Of the former class, the most notable member was young James Madison, of Virginia. As previously stated, he was only thirty-six years of age; but, from his early boyhood, he had been a profound and ardent student of government, and no one in the Convention, with the possible exception of James Wilson, could discuss the subject with the same erudition. He was the Edmund Burke of America, and it is strange that this country has never fittingly honored him, as England has honored Edmund Burke.

Before the Virginia delegation, of which Madison was one, had reached Philadelphia, the young Virginian was already working upon a concrete plan for the new government, and the Virginia propositions, as subsequently introduced on the first day of the Convention by Randolph, as Governor of Virginia, were so similar to the previous suggestions of Madison in his letters written to his fellow delegates, that the conjecture is

reasonable that he was the real author of the Virginia resolutions.

On April 8, 1787, he wrote to Governor Randolph about "the business of May next," and assuming "that some leading proposition at least would be expected from Virginia," he proceeded to outline his own views in a very remarkable letter, which goes far to justify his title of "the Father of the Constitution." Among other things, he says:

"I hold it for a fundamental point, that an individual independence of the States is utterly irreconcilable with the idea of an aggregate sovereignty. I think, at the same time, that a consolidation of the States into one simple republic is not less unattainable than it would be inexpedient. Let it be tried, then, whether any middle ground can be taken, which will at once support a due supremacy of the national authority, and leave in force the local authorities so far as they can be subordinately useful."

He then proceeded to anticipate the substance of the Virginia resolutions. He advocated that the best of the Articles of Confederation should be incorporated in a new Constitution, rather than that the new Constitution should be merely a graft of the old. He therefore suggested a new government with plenary power "in all cases where uniform measures are necessary," with a judiciary that should be nationally supreme, a legislature divided into two branches (instead of the old Congress, which consisted of a single branch), and an executive that would guarantee every State against internal as well as external dangers. He sagaciously concluded by suggesting a peaceful, but none the less actual, revolution, by stating that "to give the new system its proper energy, it will be desirable to have it ratified by the authority of the people, and not merely by that of the legislatures." His plan, therefore, contemplated a supersession of the existing Federal Government and an ignoring of the existing State Governments to the extent that the ultimate source of power would be the American people.

Later, he expressed the same thought in *The Federalist*, in

which papers he was to collaborate with Alexander Hamilton and John Jay:

"The genius of republican liberty seems to demand
* * * that all power should be derived from the people."

To him, "the people," however, was not the several peoples of the several States; but a new political reservoir of power, namely, the American people collectively.

It is hard for a later age to appreciate the fact that Madison's suggestion, which was probably discussed fully at Franklin's dinner and which was certainly the subject of subsequent conferences between the Virginia and Pennsylvania delegates, while awaiting the arrival of a quorum, was essentially revolutionary; for its purpose was to ignore the existing government and create a new one in its place.

Had this been done by violence it would have been as much a *coup d'état* as Napoleon's seizure of the reins of government on the XVIII Brumaire, but Virginia and Pennsylvania planned to destroy one government and create another by peaceful methods and the power of persuasion, and with the consent of the people.

To do this was no easy task, and its successful accomplishment is one of the great achievements in the history of free governments. It was necessary for this minority of far-sighted men to convince a large majority of able men that the Convention should not only create a new government but should give it powers which no one in the colonies had hitherto ventured to suggest. As to these, Franklin subsequently made the sage suggestion, which time has since verified, that—

"though there is a general dread of giving too much power to our *governors*, I think we are more in danger from too little obedience in the *governed*." *

It was fortunate that the other delegates were slow in arriving and that the Convention did not meet for nearly a fort-

*Letter to M. Le Veillard, dated Philadelphia, 17 Feb., 1788.

night after the date announced for the beginning of its sessions, for this gave the delegates from Virginia and Pennsylvania an opportunity to have these preliminary conferences to perfect their plans for a new departure in American policy to concrete form. They were then the two greatest Commonwealths and it is to their lasting honor that they cleared the way.

George Mason, of Virginia, wrote on May 20, 1787, to his son:

"The Virginia deputies (who are all here) meet and confer together two or three hours every day, in order to form a proper correspondence of sentiments; and, for form's sake, to see what new deputies are arrived, and to grow into some acquaintance with each other, we regularly meet every day at three o'clock. These and some occasional conversations with the deputies of different States, and with some of the general officers of the late army (who are here upon a general meeting of the Cincinnati), are the only opportunities I have hitherto had of forming any opinion upon the great subject of our mission, and, consequently, a very imperfect and indecisive one. Yet, upon the great principles of it, I have reason to hope there will be greater unanimity and less opposition, except from the little States, than was at first apprehended. The most prevalent idea in the principal States seems to be a total alteration of the present federal system, and substituting a great national council or parliament, consisting of two branches of the legislature, founded upon the principles of equal proportionate representation, with full legislative powers upon all the subjects of the Union; and an executive: and to make the several State legislatures subordinate to the national, by giving the latter the power of a negative upon all such laws as they shall judge contrary to the interest of the federal Union. It is easy to foresee that there will be much difficulty in organizing a government upon this great scale, and at the same time reserving to the State legislatures a sufficient portion of power for promoting and securing the prosperity and happiness of their respective citizens; yet with a proper degree of coolness, liberality and candor (very rare commodities by the bye), I doubt not but it may be effected. There are

among a variety some very eccentric opinions upon this great subject; and what is a very extraordinary phenomenon, we are likely to find the republicans, on this occasion, issue from the Southern and Middle States, and the anti-republicans from the Eastern; however extraordinary this may at first seem, it may, I think be accounted for from a very common and natural impulse of the human mind. Men disappointed in expectations too hastily and sanguinely formed, tired and disgusted with the unexpected evils they have experienced, and anxious to remove them as far as possible, are very apt to run into the opposite extreme; and the people of the Eastern States, setting out with more republican principles, have consequently been more disappointed than we have been."

Washington was entertained by Robert Morris, and a letter by Mrs. Morris gives us a passing glimpse of the silent soldier, as he worked with his colleagues. She tells us that he would come into the house so quietly that they would be wholly unaware of the fact until they discovered it by accident. He would go to his room and remain for hours, and they would find him there absorbed in his papers or sitting in silent meditation. He had prepared before he came an abstract of the federal states of ancient and modern times and had given much thought to the form of the new government. The theory of some modern historians that he had scant knowledge of the subject matter of the Convention is without foundation.*

* While Washington's diary contains no account of the proceedings in the Convention, yet it gives a very good idea of his social activities during the four months and four days that he remained in Philadelphia. It is a long record of teas and dinners in which the great General was the honored guest. One day we find him attending a lecture entitled a "Dissertation on Eloquence." Another day he dines with Mr. Jared Ingersoll. On another he rides out to Mr. Peters' mansion at Belmont. Again he attends the wedding of Peggy Chew. One Sunday we find him attending a Roman Catholic church, on another occasion an Episcopal church, and on a third Sunday a Calvinist church. Apparently in religion as in all things he played no favorites. Formal entertainments were not lacking for him, for some members of the Convention formed a dining club, with which on June 7th he dined at the Indian Queen, and on Saturday, the 9th, at the City Tavern, and thereafter on many occasions. On June 10th he visited Bartram's Gardens. On June 18th he was the guest of the Sons of St. Patrick, and on June 30th he tells us he dined with a club at Springsbury, consisting of some gentlemen of Philadelphia, "accompanied by the females of the families," and he adds this was "ladies

He was a silent man, and so rarely expressed an opinion that some iconoclastic historians have gratuitously assumed that his mind worked very slowly, but such was not the impression of his contemporaries. Patrick Henry voiced the general judgment when, speaking of the Second Continental Congress, the eloquent Virginian said:

“When you speak of solid opinion and sound judgment, Colonel Washington is unquestionably the greatest man upon that floor.”

Moreover he had that indefinable thing that we call authority. As previously suggested, the attitude towards him of all his associates was that of Kent to Lear when the former said:

“You have that in your countenance which I would fain call master, authority.”

His reserve amounted to austerity, for in a nobler sense, “always he was Cæsar.” Years later, Van Buren narrated an anecdote told to him by one who had it from Alexander Hamilton that Gouverneur Morris on one occasion doubted Washington’s austerity, and once boasted that he could be familiar with Washington. Hamilton replied, “If you will, at the next reception evening, gently slap him on the shoulder and say, ‘My

day.” On July 2d he dined with members of the Convention at the Indian Queen and afterwards walked in the State House yard.

On July 3d he varied his attendance in the Convention by sitting for the portrait by Mr. Peale, and in the evening attended a dinner of the Agricultural Society at Carpenters Hall. On July 4th he visited Doctor Shovat’s “anatomical figures” and after attending a Calvinist church participated in the anniversary of Independence and heard an oration. That night he dined with the State Society of the Cincinnati. Again we find that on July 14th he dined at Springsbury with “the club,” after attending that afternoon a performance of *The Tempest* at the local theatre. On the 21st he dines at Springsbury with the social club “of Gentlemen and Ladies,” and again went to the theatre to hear the play of *The Generous Sultan*. On July 30th he rode to Valley Forge and with intense interest inspected the old cantonments of the Army, which were in ruins; and, later, on August 3d, he went up to Trenton on a fishing expedition, probably revisiting the scene of that wintry Christmas Eve when he turned the tide of disaster by crossing the Delaware and surprising the Hessians. On August 19th he rode to White Marsh to visit the old encampments of his Army, and on his return dined at Germantown.

dear General, how happy I am to see you look so well!" a supper and wine shall be provided for you and a dozen of your friends." The challenge was accepted. On the evening appointed, a large number attended; and at an early hour Gouverneur Morris entered, bowed, shook hands, laid his left hand on Washington's shoulder, and said, "My dear General, I am very happy to see you look so well!" Washington withdrew his hand, stepped suddenly back, fixed his eye on Morris for several minutes with an angry frown, until the latter retreated abashed, and sought refuge in the crowd. The company looked on in silence. At the supper, which was provided by Hamilton, Morris said, "I have won the bet, but paid dearly for it, and nothing could induce me to repeat it."

Madison's conception of a dual government was not original with him. Six years before a Philadelphia merchant, one Peletiah Webster, had published a brochure proposing a scheme of dual sovereignty, under which the citizens would owe a double allegiance—one to the constituent States within the sphere of their reserved powers, and one to a federated government within the sphere of its delegated powers. Leagues of States had often existed, but a league which, within a prescribed sphere, would have direct authority over the citizens of the constituent States, without, however, abolishing the authority of such States as to their reserved sphere of power, was a novel theory. Curiously enough, another Webster, the famous author of the Dictionary—Noah Webster—had in pamphlet and public addresses suggested the same novel idea. Whether the Virginia project had been influenced by either of these suggestions is not clear. There is no record of any reference to either of them in the debates in the Constitutional Convention, although Madison refers to Peletiah Webster's brochure in a paper written long after the Convention and printed as a preface to his Journal. From whatever source derived, however, it is certain that before the Convention met Pennsylvania and Virginia, two of the most powerful States, were committed to this novel scheme. The idea was in the air and quite naturally so, for all the evils of the Confederation were due to the inability of the Congress—the central government, such as it

was—to exercise direct authority over the American people. However, the only alternative hitherto had seemingly been to abolish the State governments altogether and this solution was intolerable to all but a very few. The dual allegiance was novel. History gives no prototype.

The suggestion was a radical one, for the States, with few exceptions, were chiefly insistent upon the preservation of their sovereignty, and while they were willing to amend the Articles of Confederation by giving fuller authority to the central government, such as it was, the suggestion of subordinating the States to a new sovereign power, whose authority within circumscribed limits was to be supreme, was opposed to all their conventions and traditions. Washington, however, had warmly welcomed the creation of a strong central government, and his correspondence with the leading men of the colonies for some years previously had been burdened with arguments to convince them that a mere league of States would not suffice to create a stable nation.

To George Washington, soldier and statesman, is due above all men the ideal of a federated union, for without his influence—that of a trusted and unselfish leader—the great result would probably never have been secured. While still waiting for the convention to meet, and while discussing what was expedient and practicable when they did meet, Washington one day said to a group of delegates, who were considering the acute nature of the crisis:

“It is too probable that no plan that we propose will be adopted. Perhaps another dreadful conflict is to be sustained. If, to please the people, we offer what we ourselves disapprove, how can we afterwards defend our work? Let us raise a standard to which the wise and just can repair. The event is in the hand of God.” *

Noble words, worthy of acceptance in all times and in all nations, and it was in this spirit that the Convention finally convened on May 25, 1787.

* The authority for this statement is Gouverneur Morris. (See Appendix V.)

CHAPTER VI

THE OPENING OF THE CONVENTION

"The shallow murmur but the deep are dumb."

—Walter Raleigh.

WHEN the delegates from nine States had assembled, Washington was unanimously elected the presiding officer of the convention. It began by adopting rules of order, and the most significant of these was the provision for secrecy. No copy should be taken of any entry on the Journal, or even permission given to inspect it, without leave of the Convention, and "nothing spoken in the house be printed or otherwise published or communicated without leave." The yeas and nays should not be recorded. The rule of secrecy was enlarged by an unwritten understanding that, even when the Convention had adjourned, no disclosure should be made of its proceedings during the lives of its members. Apparently, Luther Martin of Maryland, and George Mason, of Virginia, understood that the rule of secrecy terminated with the Convention, for they were the first to lift the veil. The significant silence of the other delegates as long as they lived proves the contrary, for this Convention was for most of them the great event of their lives and yet, with very few exceptions, all died with the secrets of the Convention undisclosed. At the end of the Convention, its Secretary, at Washington's orders, and as directed by the Convention, carefully burned every record, except the Minutes, which were put in Washington's custody.

When after nearly four months, the convention adjourned, the secret had been kept, and no one knew even the concrete result of its deliberations until the Constitution itself, and nothing else, was offered to the approval of the people. The highway, upon which the State House fronted, was covered

with earth, to deaden the noise of traffic, and sentries were posted at every means of ingress and egress, to prevent any intrusion upon the privacy of the convention. The members were not photographed daily for the pictorial Press, nor did any cinema register their entrance into the simple colonial hall where they were to meet. Notwithstanding this limitation—for no present-day conference or assembly can proceed with its labors until its members are photographed for the curiosity of the public—these simple-minded gentlemen—less intent upon their appearance than their task—were to accomplish a work of enduring importance.

The rule of secrecy was not adopted without some dissent, and, while it served an invaluable purpose in holding the convention together during its period of storm and stress, yet it later became, when the Constitution was offered to the people for ratification, one of the strongest arguments of those who opposed such ratification.

The most forceful opponent of the Constitution was Luther Martin, of Maryland, possibly the greatest advocate of his time. He did not take his seat until June 9th, and the policy of secrecy, which had already been adopted, intensified his opposition.

In his report to the Legislature of Maryland, shortly after the Convention adjourned, he said:

“Before I arrived, a number of rules had been adopted to regulate the proceedings of the Convention, by one of which, seven States might proceed to business, and consequently four States, the majority of that number, might eventually have agreed upon a system, which was to affect the whole Union. By another, the doors were to be shut, and the whole proceedings were to be kept secret; and so far did this rule extend, that we were thereby prevented from corresponding with gentlemen in the different States upon the subjects under our discussion; a circumstance, Sir, which, I confess, I greatly regretted. I had no idea, that all the wisdom, integrity, and virtue of this State, or of the others, were centred in the Convention. I wished to have corresponded freely and confidentially with emi-

nent political characters in my own and other States; not implicitly to be dictated to by them, but to give their sentiments due weight and consideration. So extremely solicitous were they, that their proceedings should not transpire, that the members were prohibited even from taking copies of resolutions, on which the Convention were deliberating, or extracts of any kind from the journals, without formally moving for, and obtaining permission, by a vote of the Convention for that purpose."

Later in the sessions of the Convention and after the general principles upon which the new government was to be formed had been adopted in the form of abstract propositions in the Committee of the Whole, a Committee on Detail was appointed to put them into the working form of a constitution. It was then that Luther Martin made a motion which, at this late day, seems altogether reasonable; but its rejection shows the tenacity with which the Convention adhered to the policy of secrecy.

In his report to the Legislature of Maryland, he said:

"Before the adjournment, I moved for liberty to be given to the different members to take correct copies of the propositions, to which the Convention had then agreed, in order that during the recess of the Convention, we might have an opportunity of considering them, and, if it should be thought that any alterations or amendments were necessary, that we might be prepared against the Convention met, to bring them forward for discussion. But, Sir, the same spirit, which caused our doors to be shut, our proceedings to be kept secret,—our journals to be locked up,—and every avenue, as far as possible, to be shut to public information, prevailed also in this case; and the proposal, so reasonable and necessary, was rejected by a majority of the Convention; thereby precluding even the members themselves from the necessary means of information and deliberation on the important business in which they were engaged."

The extreme care which was taken to preserve this secrecy inviolate, and its purpose, were indicated in an incident handed down by tradition.

One of the members dropped a copy of a proposition then before the Convention for consideration, and it was found by another of the delegates and handed to General Washington. At the conclusion of the session, Washington arose and sternly reprimanded the member for his carelessness by saying:

"I must entreat gentlemen to be more careful, lest our transactions get into the newspapers and disturb the public repose by premature speculations. I know not whose paper it is, but there it is [*throwing it down on the table*]. Let him who owns it, take it."

He then bowed, picked up his hat and left the room with such evidences of annoyance that, like school-children, no delegate was willing to admit the ownership of the paper.

Washington was so punctilious in this policy of secrecy that, even when writing to Lafayette (then in France), he regretted his inability to tell his companion-in-arms and close confidant any details of the Convention which was then in session,—even though it was improbable, if not impossible, that any such disclosures to one in France could prejudice the secrecy of the Convention before it terminated its labors. He tells us in his diary that he refrained for the same reason from recording any detail of the Convention in this private diary, lest some time it would see the light of day.

We learn from an extract from the journal of Manasseh Cutler that Dr. Franklin—possibly with the garrulity of age—nearly violated the injunction of secrecy.

Seated under the famous mulberry tree, he was entertaining some friends in his garden near Market Street, and, having heard of a two-headed snake, which had attracted his scientific curiosity, the Doctor said that, in moving, one head would attempt to go on one side of a bush and the other head on the other side, and that neither head seemed disposed to agree upon a common destination. The diarist then continues:

"He was then going to mention a humorous matter that had that day taken place in Convention, in consequence of his comparing the snake to America; for he

seemed to forget that everything in Convention was to be kept a profound secret; but the secrecy of Convention matters was suggested to him, which stopped him, and deprived me of the story he was going to tell."

The application to the Convention of the snake story can readily be imagined, but the incident discloses how punctilious the delegates were to keep the pledge of secrecy even as to trifles.

How different the result of recent international conferences, and especially of the world conferences at Versailles in 1919, might have been, had there been the same reasonable provisions for discussion and action uninfluenced by too premature public comment of the day! In these days, when representative government has degenerated into government by a fleeting public opinion, the price we pay for such government by, for and of the Press, is too often the inability of representatives to do what they deem wise and just.

At the close of the Convention the minutes alone, of all the written records of the Convention, were, as above stated, committed into the keeping of Washington, with instructions to "retain the journal and other pages, subject to order of Congress, if ever formed under the Constitution."

Even the journal consisted of little more than daily memoranda, from which the minutes ought to have been, but never were, made; and these fragmentary records of the proceedings of a convention which had been in continuous session for nearly four months were never published until the year 1819, or thirty-two years after the close of the Convention. Thus, the American people knew nothing of their greatest Convention until a generation later, and then only a few bones of the mastodon were exhibited to their curious gaze.

The members of the Convention kept its secrets inviolate for many years. With few exceptions, the great secrets of the convention died with them. Only one, James Madison, left a comprehensive statement of the more formal proceedings. With this notable exception, only a few anecdotes, handed down by tradition, escaped oblivion. The first of the delegates to violate the pledge of secrecy was Luther Martin, of Mary-

land. He had been the leader of the small-States party and from the time that he took his seat on June 9th and until shortly before the adjournment of the Convention, he had bitterly fought the proposition to create a national government. Unless we except Patrick Henry, he was the most eloquent and determined opponent of the new Constitution. He left the Convention shortly before its adjournment, in order to inaugurate the fight against its ratification in his own State.

✓ He appeared before the Legislature of Maryland on November 29, 1787, and made a long speech in opposition to the Constitution, in which he disclosed some details of the Convention, including those which I have already quoted. He realized that the new Constitution, for which the American people were not then prepared, would gain its greatest strength from the fact that it was favored by General Washington and Dr. Franklin, and that the authority of these two great and unselfish leaders, whom the American people trusted so profoundly, might—as the event proved—secure its ratification.

Referring to the time when the Convention sat as a Committee of the Whole, with Mr. Gorham of Massachusetts as Chairman and with Washington sitting as a delegate, he said :

“The honorable Mr. Washington was then on the floor, in the same situation with the other members of the Convention at large, to oppose any system he thought injurious, or to propose any alterations or amendments he thought beneficial. To these propositions, so reported by the committee, no opposition was given by that illustrious personage, or by the President of the State of Pennsylvania. They both appeared cordially to approve them, and to give them their hearty concurrence; yet this system I am confident, Mr. Speaker, there is not a member in this House would advocate, or who would hesitate one moment in saying it ought to be rejected. I mention this circumstance, in compliance with the duty I owe this honorable body, not with a view to lessen those exalted characters, but to show how far the greatest and best of men may be led to adopt very improper measures through error in judgment, State influence, or by other causes, and

to show, that it is our duty not to suffer our eyes to be so far dazzled by the splendor of names, as to run blindfolded into what may be our destruction.

Mr. Speaker, I revere those illustrious personages as much as any man here. No man has a higher sense of the important services they have rendered this country. No member of the Convention went there more disposed to pay a deference to their opinions; but I should little have deserved the trust this State reposed in me, if I could have sacrificed its dearest interests to my complaisance for their sentiments."

Again he said:

"Mr. Speaker, I think it my duty to observe, that, during this struggle to prevent the large States from having all power in their hands, which had nearly terminated in a dissolution of the Convention, it did not appear to me that either of those illustrious characters, the honorable Mr. Washington or the President of the State of Pennsylvania, was disposed to favor the claims of the smaller States, against the undue superiority attempted by the large States; on the contrary, the honorable President of Pennsylvania was a member of the committee of compromise, and there advocated the right of the large States to an inequality in both branches, and only ultimately conceded it in the second branch on the principle of conciliation, when it was found no other terms would be accepted. This, Sir, I think it my duty to mention for the consideration of those, who endeavor to prop up a dangerous and defective system by great names."

Shortly after his appearance in the Maryland Legislature, Luther Martin became involved in an acrimonious correspondence with Oliver Ellsworth, of Connecticut, and again, in the recriminatory letters which passed between them, the curtain was partly raised upon the details of the Convention. Martin's powerful address to the Maryland Legislature, although it was inspired by a spirit of intense opposition to the result of that Convention and bears every mark of emotional partisanship, yet gives a very clear and fairly accurate idea

of the great struggle in the Convention between the larger and the smaller States, which continued from the beginning to the end. Without Martin's account and the subsequent disclosures to which reference will presently be made, the world would have been forever ignorant of any detail of one of the greatest, if not the greatest, political conventions in the annals of mankind.

After Robert Yates, Chief Justice of New York, died in 1801 his incomplete notes were published in 1821; but, as he had left the Convention a few months after it began, his notes ceased with the 5th of July, 1787, and were at best very fragmentary.

The curtain was never fully raised until more than half a century later, when Madison's Debates was first published. One of the ablest of the delegates, that very great and most useful delegate regularly attended the sessions and kept notes from day to day of the debates. The circumstances are thus explained in his own words:

✓ "The curiosity I had felt during my researches into the history of the most distinguished confederacies, particularly those of antiquity, and the deficiency I found in the means of satisfying it, more especially in what related to the process, the principles, the reasons, and the anticipations, which prevailed in the formation of them, determined me to preserve, as far as I could, an exact account of what might pass in the Convention while executing its trust; with the magnitude of which I was duly impressed, as I was by the gratification promised to future curiosity by an authentic exhibition of the objects, the opinions, and the reasonings, from which the system of government was to receive its peculiar structure and organization. Nor was I unaware of the value of such a contribution to the fund of materials for the history of a Constitution on which would be staked the happiness of a people great even in its infancy, and possibly the cause of liberty throughout the world.

In pursuance of the task I had assumed, I chose a seat in front of the presiding member, with the other members on my right and left hands. In this favorable position for hearing all that passed, I noted, in terms legible and in ab-

breviations and marks intelligible to myself, what was read from the Chair or spoken by the members; and losing not a moment unnecessarily between the adjournment and reassembling of the Convention, I was enabled to write out my daily notes during the session, or within a few finishing days after its close, in the extent and form preserved in my own hand on my files.

In the labor and correctness of this I was not a little aided by practice, and by a familiarity with the style and the train of observation and reasoning which characterized the principal speakers. *It happened, also, that I was not absent a single day, nor more than a casual fraction of an hour in any day, so that I could not have lost a single speech, unless a very short one.*

It may be proper to remark, that, with a very few exceptions, the speeches were neither furnished, nor revised, nor sanctioned, by the speakers, but written out from my notes, aided by the freshness of my recollections. A further remark may be proper, that views of the subject might occasionally be presented, in the speeches and proceedings, with a latent reference to a compromise on some middle ground, by mutual concessions. The exceptions alluded to were,—first, the sketch furnished by Mr. Randolph of his speech on the introduction of his propositions on the 29th day of May; secondly, the speech of Mr. Hamilton, who happened to call on me when putting the last hand to it, and who acknowledged its fidelity, without suggesting more than a very few verbal alterations which were made; thirdly, the speech of Gouverneur Morris on the second day of May, [second of July?] which was communicated to him on a like occasion, and who acquiesced in it without even a verbal change. The correctness of his language and the distinctness of his enunciation were particularly favorable to a reporter. The speeches of Doctor Franklin, excepting a few brief ones, were copies from the written ones read to the Convention by his colleague, Mr. Wilson, it being inconvenient to the Doctor to remain long on his feet.”

While Madison was not a stenographer, he had a gift for condensing a speech and fairly representing its substance. He

jealously guarded his account of the Convention until his death. Its very existence was known to few. He died in 1836, and four years later the government purchased the manuscript from his widow. Then, for the first time, the curtain was measurably raised upon the proceedings which had created one of the greatest nations in history.

Fifty-three years after the close of the Convention, and when nearly every one of its participants was dead, Madison's history was first published and thus for the first time the curtain was raised upon the great drama as a whole.

When was a great secret better kept? Grateful as posterity must be for this inestimable gift of a great human enterprise, yet even Madison's careful history fills one with the deepest regret that this wonderful debate, which lasted for nearly four months between men of no ordinary ability, could not have been preserved to the world in its entirety.

As appears in Madison's preface, three of the speeches which Madison gives in his *Debates* are complete, for when Doctor Franklin spoke he reduced his remarks to writing and gave a copy to Madison, but of the other speeches only a fragment remains. Thus, that "admirable Crichton," Alexander Hamilton, addressed the convention in a speech that lasted five hours, in which he stated his philosophy of government, but of that only a short condensation, and possibly not a wholly accurate fragment, remains. Luther Martin, to the great disgust of the Convention, spoke once for two days. He was a great, although an excessively voluble, orator, and the world lost a great oration, for Madison gives only a fragment of it.

Without this extraordinary provision for secrecy, which is so opposed to modern democratic conventions, and which so little resembles the famous point as to "open covenants openly arrived at," the Convention could not have accomplished its great work, for these wise men realized that a statesman ordinarily cannot act wisely under the observation of a gallery, and especially when the gallery compels him by the pressure of public opinion to work as it directs. I recognize that public opinion—often temporarily uninformed but in the end gen-

erally right—does often save the democracies of the world from the selfish ends of self-seeking and misguided leadership; but, given noble and wise representatives, they work best when least influenced by the fleeting passions of the hour.

It is evident that if the framers of the Constitution had met, as similar conventions have within recent years met at Versailles and Genoa, with the world as their gallery and with the representatives of the Press as an integral part of the conference, they would have accomplished nothing. The probability is that the Convention would not have lasted a month, if its immediate purpose had been to placate current opinion. It may be doubted whether such a convention, if called to-day, in America or elsewhere, could achieve like results, for in this day of unlimited publicity, when men divide not as individuals but in powerful and organized groups, a constitutional convention would probably prove a witches' cauldron of class legislation and demagoguery. The Constitution provides for a new convention to amend or revise on the call of the States the whole Constitution, but even in these hysterical days, what party, class or section would now seriously advocate such a new convention? Certainly the result would prove too complex to be workable, as witness the recent attempts of New York and Illinois to draft new constitutions, both of which were rejected by the people. Is it not possible that modern democracy is in danger of strangulation by its present-day methods and ideals? Again the words of Washington suggest themselves: "If, to please the people, we offer what we ourselves disapprove, how can we afterwards defend our work? Let us raise a standard to which the wise and just can repair."

Working with a sad sincerity and with despair in their hearts, this little band of men wrought a work of surpassing importance, and if they did not receive the immediate plaudits of the living generation, their shades can at least solace themselves with the reflection that posterity has acclaimed their work as one of the greatest political achievements of man, and, tried by the test of experience, certainly the most successful.

The secrecy attending the debates in the Convention protected the members from undue external pressure, but it had

also other merits. Under it the members freely expressed their opinions to each other and were not under the temptation to retard the work of the Convention by making elaborate speeches for public consumption. Under it the members found it more easy to reach those compromises without which no constitution would have been accepted by all of the States; they found it more easy to recede from extreme positions and meet upon middle grounds, which did not satisfy any one completely but which could be accepted by all. And under it the issue presented to the State conventions was simplified. The States were asked to accept or reject the constitution in its entirety and not to consider all manner of might-have-beens.

The Convention sat for four months, as it was; but if the speeches of the members had been made for public consumption many more months would have been required for the framing of the constitution. We have preserved for us the unfriendly comment of Oliver Ellsworth upon one of the speeches of Luther Martin.

“The day you took your seat must be long remembered by those who were present; nor will it be possible for you to forget the astonishment your behavior almost instantaneously produced. You had scarcely time to read the propositions which had been agreed to after the fullest investigation, when, without requesting information, or to be let into the reasons of the adoption of what you might not approve, you opened against them in a speech which held two days, and which might have continued two months, but for those marks of fatigue and disgust you saw strongly expressed on whichever side of the house you turned your mortified eyes. * * * But this did not teach you to bound your future speeches by the lines of moderation; for the very next day you exhibited without a blush another specimen of eternal volubility.”

Martin was not in accord with the spirit of the Convention and did not ultimately sign his name to the Constitution on behalf of his State. For this reason he may have been judged harshly by Ellsworth's criticism. Whether true or false, the fact re-

mains that the Convention very wisely removed from its members the incentive to ornate or lengthy speech, to which applause of the people inevitably gives rise.

Moreover, compromises were necessary, and therefore the passionate antagonism of debate was to be minimized. It is true that the membership of the Convention did not reflect the most important division which then existed among the American people, the division along economic lines which subsequently ranged the creditors, the merchants, the lawyers, the property owners and the speculators on one side and the debtors, the small farmers and the mechanics on the other side, a division which had affected men's attitude towards State legislation and which was afterwards the most important factor in determining their attitude towards the ratification of the new Constitution. There were no such factions in the Convention. There were, however, important differences of interest between the large States and the small States, and it was necessary to formulate workable compromises between them. Such compromises were best secured by reducing speech-making to the minimum.

There was, however, no dearth of oratory, even if its sweetness was wasted on the desert air of a secret convention. Gouverneur Morris spoke 173 times, Wilson, 168, Madison, 161, Sherman, 138, Mason, 136, Gerry, 119 and George Washington, on *one* occasion only. Indeed, when the prospect for the reconciling of conflicting interests seemed darkest Franklin made one of his greatest contributions towards the framing of the Constitution by suggesting that the Convention adjourn for two days, during which the members should confer with those with whom they disagreed rather than with those who shared their opinions. It was by heart-to-heart talks and not by broad-casted speeches that harmony was secured.

Finally, the secrecy attending the meetings of the Convention properly focused the attention of the public upon the completed document and not upon temporary disagreements and the fact that compromises were made. The most devout believer in popular government may well concede that bills should be formulated in committees though adopted only in open sessions

of the legislature. He may believe in submitting measures to the referendum and yet admit that measures should be formulated deliberately and not by the vociferous methods of a town meeting. He may well concede that the Convention properly formulated in secrecy the concrete plan which was submitted to the conventions in the several States for their consideration.

Not only were the sessions of the Convention secret but the completed Constitution was silent as to many matters which were discussed in the Convention. The framers wisely thought that some problems should be turned over to the future unsolved. It was, therefore, better that attention should not be distracted from the Constitution to half finished discussions in the Convention.*

* It is interesting to note that in the Versailles Assembly of 1919, while much had been said as to "open covenants to be openly arrived at," the "Big Four" soon followed the wisdom of the men of 1787.

From the official minutes of the Versailles Peace Conference it appears that the following discussion took place:

WILSON. "I would like to ask whether there be any objection, owing to the likelihood of leaks, to having the representatives of the press present at the Peace Conference, as practically nothing will be discussed in that large session, at which any statement will be little more than a public statement of what has been decided beforehand. For my part, I would prefer complete publicity to publicity by leak."

BALFOUR. "The suggestion that the press be present at the Conference is open to this *prima facie* objection, viz., that if this is carried out the meetings will become purely formal. Moreover, if the press be present at the large Conferences, then it will be necessary to bring the other powers, say the Czecho-Slovaks, into the small conferences."

WILSON. "I assume that it will hardly be possible to discuss cases such as this in the large Conferences. Moreover, the Czecho-Slovaks could hardly do more than repeat at the large Conference what they have already given to the world. The determination as to what will be proposed by the Great Powers at the large Conference will be decided by the Great Powers beforehand."

PICHON. "I remark that should the press be admitted to the Peace Conference there will be no end of speaking."

LOYD GEORGE. "I venture to express the hope that President Wilson will not press the suggestion. I fear there will be no end to the Conference if reporters are present. Small nations will want to speak at great length. Moreover, as Mr. Balfour has pointed out, this might result in very unpleasant incidents, for instance, between Serbia and Montenegro."

PICHON. "It is to be observed, too, that in the study of the pre-

liminaries of peace, it will be dangerous to give the enemy too much information on the points on which there is any difficulty or particular discussion between the Great Powers."

CLEMENCEAU. "I feel we must be unanimous in what we do. There will be much that I will accept to maintain our unanimity. I will make sacrifices, I will say nothing that might tend to divide the Conference, but if one small power that has not been heard in our conversations asks how France has come to accept a certain provision, then I will have to reply, and do not forget that this reply will then be made before the public."

WILSON. "I raised the point for discussion, but will not press it."

No feature of the Convention has interested the author more than the secrecy of its proceedings. It is a curious reflection on the shifting standards of public conduct that it is questionable whether a convention of similar importance today could preserve to the same extent the confidential character of its proceedings. The Senate of the United States frequently goes into executive session and at the beginning of the Republic its proceedings were always secret. Nevertheless, little of public interest ever takes place in these executive sessions which does not speedily find its way into the press. President Wilson well understood the impossibility of complete secrecy in this age of publicity, when he recognized that in the greatest world conference ever held "publicity by leak" could not be avoided.

The author refers the reader to some additional notes on the secrecy of the Constitutional Convention which will be found in Appendix VI, Note 2. I am indebted for these references to Charles Warren's recent book "The Supreme Court and Sovereign States." This admirable writer, whose account of the Supreme Court is a monumental contribution to history, has again placed every student of the history of our government in his debt by the care with which he has gathered additional contemporaneous data.

CHAPTER VII

THE OPENING OF THE BATTLE

Liberty, to be enjoyed, must be limited by law, for law ends where tyranny begins, and the tyranny is the same, be it the tyranny of a monarch, or of a multitude,—nay, the tyranny of the multitude may be the greater, since it is multiplied tyranny.

—Burke.

THE rules of order and the nature of the proceedings thus determined, the Convention opened by an address by Mr. Randolph of Virginia, in which he submitted, in the form of fifteen points—nearly the number of the fatal fourteen—the outlines for a new government. He himself in his opening speech summarized the propositions by candidly confessing “that they were not intended for a federal government” (thereby meaning a mere league of States) but “a strong consolidated union.” Upon this radical change the Convention was to argue earnestly and at times bitterly for many a weary day. The plan provided for a national legislature of which the lower branch should be elected by the people and the upper branch by the lower branch upon the nomination of the legislatures of the States. This legislature should enjoy all the legislative rights given to the federation, and there followed the sweeping grant that it “could legislate in all cases to which the separate States are incompetent or in which the harmony of the United States may be interrupted by the exercise of individual legislation,” with power “to negative all laws passed by the several States contravening in the opinion of the national legislature the Articles of the Union.”

A national executive was proposed, together with a national judiciary, and these two bodies were given authority “to ex-

amine every act of the national legislature before it shall operate and every act of a particular legislature before a negative thereon shall be final." This marked a positive subversion of the Articles of Confederation, under which there was no national executive or judiciary, and under which the legislature had no direct power over the citizens of the States, and could only impose duties upon the States themselves by the concurrence of nine of the thirteen. It was not merely a revolt against existing abuses, it was a peaceful revolution against an impotent Government. It must have made many of the members gasp with astonishment.*

Hardly had Mr. Randolph submitted the so-called Virginia plan when Charles Pinckney, of South Carolina, a young man of twenty-nine years of age, with the courage of youth submitted to the House a draft of the future federal government. Curiously enough, it did not differ in principle from the Virginia plan, but was more specific and concrete in stating the powers which the federal government should exercise, and many of its provisions were embodied in the final draft. Indeed, Pinckney's plan was the future Constitution of the United States in embryo; and when it is read and contrasted with the document which has so justly won the acclaim of men throughout the world, it is amazing that so young a man should have anticipated and reduced to a concrete and effective form many of the most novel features of the Federal Government. As the only copy of Pinckney's plan was furnished years afterwards to Madison for his Debates, it is possible that some of its wisdom was of the *post factum* variety.

Having received the two plans, the Convention then went, on May 30, into a Committee of the Whole to consider the fifteen propositions of the Virginia plan *seriatim*. Mr. Gorham of Massachusetts took the chair, and Washington stepped down from the platform, and took his place among the delegates. Although he thus had the freedom of debate, he remained as before and as subsequently to the last day of the Convention, a silent member. He spoke only once and then just before the final adjournment.

* The Virginia Plan is printed in full in the Appendices. (Page 321.)

The members wisely concluded to determine abstract ideas first and concrete forms later. Apparently for the time being little attention was paid to Pinckney's plan, and this may have been due to the hostile attitude of the older members of the Convention to the presumption of his youth.

Then ensued a very remarkable debate on the immediate propositions and the principles of government which underlay them, which lasted for two weeks. On June 13 the committee rose. Even the fragments of this debate, which may well have been one of the most notable in history, indicate the care with which the members had studied governments of ancient and modern times. References were made from time to time to the forms of government of twenty-two nations of ancient and modern times. Over 130 references were made to English history and institutions and the range of the inquiry included a study of the institutions of Greece, Rome, France, the German States, Holland and Switzerland.

Hitherto, the two great parties in the Convention had been, like skillful pugilists, sparring for an opening. The Nationalists were not content to submit a concrete plan until they had secured the consent of the Convention to some of the abstract principles that would govern it, and the greatest of these was the second resolution of the Virginia plan, which read as follows:

"Resolved, that the rights of suffrage in the National Legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases."

This resolution had come up for discussion in the Committee of the Whole on May 30th, and it at once precipitated a debate. To meet objections, Mr. Madison proposed a substitute which read:

"Resolved, that the equality of suffrage established by the Articles of Confederation ought *not* to prevail in the National Legislature; and that an equitable ratio of representation ought to be substituted."

At once Mr. Read, of Delaware, was on his feet and made the first threat of secession by stating that the Deputies from Delaware were restrained by their instructions

“from assenting to any change of the rule of suffrage, and in case such a change should be fixed on, it might become their duty to retire from the Convention.”

After some remarks by Gouverneur Morris and James Madison, it was agreed that the consideration of the clause should be postponed. Evidently neither side was yet prepared to enter upon the inevitable struggle.

The issue could not be long postponed. Possibly, the States' Rights Party were awaiting the arrival of Luther Martin, from Maryland, who, on June 9th, took his seat as an avowed opponent of the Virginia plan. Thereupon Paterson, of New Jersey, moved that the Committee resume the consideration of this vital question. In seconding the motion, Mr. Brearley, of New Jersey, spoke with great feeling. The Virginia plan, he said, would result in three large States and 10 small ones. He expressed his astonishment and alarm at the proposition to change the basis of the union of the colonies, and concluded:

“Is it fair, then, it will be asked, that Georgia should have an equal vote with Virginia? I will not say it is. What remedy, then? One, only, that a map of the United States be spread out, that all the existing boundaries be erased, and that a new partition of the whole be made into thirteen equal parts.”

Mr. Paterson, of New Jersey, followed in a fiery speech. He argued that the credentials of each Delegation restricted them to the consideration of the amendment of the Articles of Confederation.

“We ought to keep within its limits, or we should be charged by our constituents with usurpation; that the people of America were sharp-sighted and not to be deceived. . . . Give the large States an influence in proportion to their magnitude, and what will be the conse-

quence? Their ambition will be proportionately increased, and the small States will have everything to fear. It was once proposed by Galloway and some others that America should be represented in the British Parliament, and then be bound by its laws. America could not have been entitled to more than one-third of the representatives which would fall to the share of Great Britain. Would American rights and interests have been safe under an authority thus constituted?"

Finally, he alluded to a hint by Mr. Wilson of—

"the necessity to which the large States might be reduced of confederating among themselves, by a refusal of the others to concur. Let them unite if they please, but let them remember that they have no authority to compel the others to unite. New Jersey will never confederate on the plan before the Committee. She would be swallowed up. I would rather submit to a monarch, to a despot, than to such a fate. I will not only oppose the plan here but on my return home do everything in my power to defeat it there."

Hardly had he finished when James Wilson arose and significantly stated that if the Confederacy should be dissolved, that a *majority*,—nay, a *minority* of the States would unite for their safety. He further stated:

"If the small States will not confederate on this plan, Pennsylvania, and he presumed some other States, would not confederate on any other. We have been told that each State being sovereign, all are equal. So each man is naturally a sovereign over himself, and all men are therefore naturally equal. Can he retain this equality when he becomes a member of civil government? He cannot. As little can a sovereign State, when it becomes a member of a federal government. If New Jersey will not part with her sovereignty, it is vain to talk of government. A new partition of the States is desirable, but evidently and totally impracticable."

At the conclusion of the debate the States' Rights Party apparently realised that it was not yet safe for them to challenge a vote and the Convention adjourned for the day.

On the morrow the debate was resumed, but the question was fortunately divided by restricting it to the second branch of the legislature (the Senate), and the proposition for equality was rejected by a vote of 6 to 5. Connecticut, New York, New Jersey, Delaware, Maryland were in the affirmative, and Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia were in the negative. The vote, however, which was simply in the Committee of the Whole, did not settle the question, for while it was temporarily passed for the consideration of other provisions of the Virginia plan, it had still to pass the Convention itself. The States' Rights Party now reached the conclusion that it was necessary for them to submit a concrete alternative plan and on June 14th Mr. Pater-son requested that the Convention adjourn to give them an opportunity to do so.

The five larger States had a population that was nearly twice as great as the remaining eight States. Thus Virginia's population was nearly ten-fold as great as that of Georgia. Moreover, the States differed greatly in their material wealth and power. Nevertheless, all of them entered the Convention as independent sovereign nations, and the smaller nations contended that the equality in suffrage and political power which prevailed in the Convention (in which each State, large or small, voted as a unit), should and must be preserved in the future government. To this the larger States were quite unwilling to yield, and when the committee rose it reported, in substance, the Virginia plan, with the proviso that representation in the proposed double-chambered Congress should be "according to some equitable ratio of representation." This marked an initial victory of the larger States but it was destined to be short lived.

The Convention had now been in session for many days, and while many minor and little contested provisions had been disposed of, the solution of the great problem seemed as far away as ever. Summer was approaching and probably the

delegates felt that matters must soon be brought to an issue, however disastrous, especially as the people were becoming impatient and the need of an efficient government became more apparent every day. The States' Rights Party determined to bring the fundamental question of equality or inequality to a final test. They brought up their heaviest artillery in the person of Luther Martin, of Maryland, who then was, as he afterwards remained for another generation, the foremost advocate of the American bar. At the session of June 27th he spoke for more than three hours and asked the indulgence of the Convention to finish his remarks on the following day on account of his exhaustion. On the following day he resumed his address, and the conclusion of his speech was menacing. He said that "in case a dissolution of the Union should take place, the small States will have nothing to fear from the power of the greater States, for it will be three great States leagued against ten smaller ones." Rather than accept the Virginia plan he expressed a preference for two confederacies, composed, respectively, of the large and small States. Madison tells us that he spoke "with much diffuseness, and considerable vehemence," but this was characteristic of all his efforts.

James Madison followed with a speech of extraordinary power, in which he reviewed the forms of government and leagues of nations of ancient and modern times. He argued that even if the Virginia plan worked a present inequality of power that ultimately "junctions of the small States will be facilitated, and time may effect that equalization which is wished for by the small States now, but can never be accomplished at once."

On June 15 the small States presented their draft, which was afterwards known as the New Jersey plan, because it was introduced by Mr. Paterson of that State. It only contemplated an amendment to the existing Constitution and an amplification of the powers of the impotent Confederation. Its chief advance over the existing government was that it provided for a federal executive and a federal judiciary, but otherwise the government remained a mere league of States, in

which the central government could generally act only by the vote of nine States, and in which their power was exhausted when they requested the States to enforce the decrees. Its chief advance over the Articles of Confederation, in addition to the creation of an executive, was an assertion that the acts of Congress "shall be the supreme law of the respective States . . . and that the judiciary of the several States shall be bound thereby in their decisions," and that "if any State or any body of men in any State shall oppose or prevent the carrying into execution of such acts or treaties the federal executive shall be authorized to call forth the power of the confederated States . . . to enforce and compel obedience to such acts or an observance of such treaties."

While this was some advance toward a national government, it yet left the national executive dependent upon the constituent States, for if they failed to respond to the call above stated the national government had no direct power over their citizens. To coerce the States as such was then impossible.

The New Jersey plan precipitated a crisis, and thereafter, and for many days, the argument proceeded, only to increase in bitterness.*

* The New Jersey Plan is printed in the Appendices in full. (Page 324.)

CHAPTER VIII

MR. HAMILTON TAKES THE FLOOR

"Losers must have leave to speak."—Colley Cibber.

THE Convention had now been in session for over three weeks, and during that time young Mr. Hamilton, of New York, had remained silent, although the Convention had owed its inspiration in no small degree to his clear and consistent vision of an amalgamation of the colonies in a truly national government.

On Monday, June 18th, he took the floor and it required the full session of that day to exhaust his eloquence. His speech lasted five hours, and some say six, and when it was concluded the Convention adjourned for the day.

It was not a helpful speech, for, apart from his gloomy predictions, it advocated extreme measures, which may have had a few admirers but certainly had no supporters. Many historians have rhapsodized over this speech, for Mr. Hamilton was one of those precocious geniuses whose very brilliancy so blinds posterity that enraptured biographers find it difficult to give a judicial estimate. These indiscriminate eulogists tell us that the speech exhausted the possibilities of human reason on the subject of the science of government, and that it left such a profound impression upon the delegates that their subsequent deliberations were greatly influenced by his reasoning.

No support for this conclusion can be found in Madison's Debates, which contains an excellent summary of the argument, or elsewhere. It is pure fiction.

Only twice in the subsequent debates was any reference made by any delegate to this speech, and shortly thereafter Mr. Hamilton returned to New York and did not return to the Convention until August 13th. Apparently he knew nothing of

what transpired in the Convention after his departure, for we find him in a letter to Rufus King, dated August 28th, asking for information as to what the Convention was doing, announcing that, "for certain reasons" which he does not specify, he intended to return "at the close" of the Convention.

Notwithstanding the biographic rhapsodies on the speech, it does not seem, as read in Madison's transcript, to be an unusual intellectual effort. It contributed little to the success of the Convention, for its moody reflections were not calculated to encourage the delegates to proceed with their labors and his extreme views, which virtually advocated an elective monarchy, simply accentuated opposition to any efficient national government.

It is hard for those who regard Hamilton as a Colossus, between whose legs the other delegates crawled as pigmies, to appreciate this fact, but it must be remembered that Hamilton was then only a young man of thirty years of age. The delegates were, on an average, more than ten years his senior, and some of them had been famous before he was born, and when, with the radicalism of youth, he advocated impossible and unwelcome propositions it is not unnatural that a reception was given to his views such as is ordinarily accorded to the radicalism of youth.

Such reception may have accounted for his protracted absences from subsequent sittings of the Convention, for when a brilliant, aggressive, self-centered, and somewhat intellectually arrogant young man addresses his elders with the moody intimation that they did not know what they were talking about, and finds that his views are not sufficiently interesting to require even comment, the most natural reaction in such a proud nature is to desist from further attempts to convince them.

This is not the generally accepted view of Mr. Hamilton's speech, and for this reason a summary of his argument should be given so that the reader can judge for himself.

Mr. Hamilton began with a modest explanation of his previous silence by saying that it was

"from respect to others whose superior abilities, age, and experience render me unwilling to bring forward ideas

dissimilar to theirs, and partly from my delicate situation with respect to my own State, to whose sentiments, as expressed by my own colleagues, I can by no means accede. The crisis, however, which now marks our affairs is too serious to permit any scruples whatever to prevail over the duty imposed on every man to contribute his efforts for the public safety and happiness."

He thereupon announced his opposition either to the Virginia or the New Jersey plans, and in so doing he confessed that he was

"much discouraged by the amazing extent of country in expecting the desired blessing from any general sovereignty that could be substituted."

This plain intimation that the Convention was impotent to do anything was naturally not encouraging. He then proceeded to discuss the true meaning of a Federal Government, and then, advertng to the argument that the powers of the Convention were limited to a mere revision of the Articles of Confederacy, he expressed his opinion that the Convention should do whatever seemed essential to the exigencies of the Union. He then discussed the two plans which had been already submitted. He announced that an effective government must depend upon the following requisites: 1, An active and constant interest in support of it; 2, the love of power; 3, an habitual attachment of the people; 4, force, whether by the coercion of laws or the coercion of arms; 5, influence, by which he explained that he

"did not mean corruption, but a dispensation of those regular honors and emoluments which produce an attachment to the government."

He then argued that in a Federal Government, meaning thereby a confederacy or league of States, all those elements tend to strengthen the constituent States and to weaken the confederacy, and he supported this view by some historic illustrations, which ranged from the Amphictyonic Council to the confederacy of the Swiss Cantons. Therefore, he sagely sug-

gested that the New Jersey Plan must necessarily fail. He argued that another destructive ingredient in the plan was the proposed equality of suffrage and that if it were adopted the large States would not consent to it (which they subsequently did), or if they did they would not long abide by it. (As a matter of fact, they have abided by it for 136 years.)

Having thus demolished the New Jersey Plan, he proceeded:

"What, then, is to be done? I am much embarrassed. The extent of the country to be governed discourages me. The expense of a General Government is also formidable, unless there were such a diminution of expense on the side of the State governments as the case would admit. *If they were extinguished*, I am persuaded that great economy might be obtained by substituting a General Government. I do not mean to shock the public opinion by proposing such a measure. On the other hand, I see no other necessity for declining it."

He saw a difficulty of a serious nature in "drawing representatives from the extremes to the center of the community. What inducements can be offered that will suffice? The moderate wages for the first branch could only be a bait to little demagogues"; and he added that the Senate would soon, from a similar cause, be filled "by certain undertakers, (*sic*) who wish for particular offices under the government."

Having thus briefly disposed of the Virginia Plan he launched, probably to the amazement of his fellow delegates, into an eulogium of the form of government against which, on constitutional principles, the colonies had just revolted, and it must have made Washington and Franklin rub their eyes in amazement to hear that the ideal form of government was the one against which they had just fought a war of seven weary years. He said:

"This view of the subject almost leads me to despair that a republican government could be established over so great an extent. I am sensible, at the same time, that it would be unwise to propose one of any other form. In

my private opinion I have no scruple in declaring, supported as I am by the opinion of so many of the wise and good, that the British Government is the best in the world; and I doubt much whether anything short of it would do in America. I hope gentlemen of different opinions will bear with me in this, and beg them to recollect the change of opinion on this subject which has taken place, and is still going on. It was once thought that the power of Congress was amply sufficient to secure the end of their institution. The error is now seen by every one. The members most tenacious of republicanism are as loud as any in declaiming against the vices of democracy. This progress of the public mind leads me to anticipate the time when others as well as myself will join in the praise bestowed by Mr. NECKAR on the British Constitution, namely, that it is the only government in the world 'which united public strength with individual security.' In every community where industry is encouraged there will be a division of it into the few and the many. Hence, separate interests will arise. There will be debtors and creditors. Give all power to the many, they will oppress the few. Give all power to the few, they will oppress the many. Both, therefore, ought to have the power that each may defend itself against the other. To the want of this check we owe our paper money, instalment laws, etc. To the proper adjustment of it the British owe the excellence of their Constitution. Their House of Lords is a most noble institution. Having nothing to hope for by a change, and a sufficient interest, by means of their property, in being faithful to the national interest, they form a permanent barrier against every pernicious innovation, whether attempted on the part of the Crown or of the Commons. No temporary Senate will have firmness enough to answer the purpose. The Senate of Maryland, which seems to be so much appealed to, has not yet been sufficiently tried. Had the people been unanimous and eager in the late appeal to them on the subject of a paper emission, they would have yielded to the torrent. Their acquiescing in such an appeal is a proof of it. Gentlemen differ in their opinions concerning the necessary checks, from the different estimates they form of the human pas-

sions. They suppose seven years a sufficient period to give the Senate an adequate firmness, from not duly considering the amazing violence and turbulence of the democratic spirit. When a great object of government is pursued, which seizes the popular passions, they spread like wild-fire and become irresistible. I appeal to the gentlemen from the New England States whether experience has not there verified the remark. As to the Executive, it seems to be admitted that no good one could be established on republican principles. Is this not giving up the merits of the question, for can there be a good government without a good Executive? The English model is the only good one on this subject. The hereditary interest of the King is so interwoven with that of the nation, and his personal emolument is so great, that he is placed above the danger of being corrupted from abroad, and at the same time is both sufficiently independent and sufficiently controlled to answer the purpose of the institution at home. One of the weak sides of republics was its liability to foreign influence and corruption. Men of little character, acquiring great power, become easily the tools of intermeddling neighbors. Sweden is a striking instance. The French and English had each their parties during the late revolution, which was effected by the predominant influence of the former. What is the inference from all these observations? That we ought to go as far, in order to attain stability and permanency, as republican principles will admit. Let one branch of the legislature hold their places for life, or at least during good behavior. Let the Executive also, be for life. I appeal to the feelings of the members present whether a term of seven years would induce the sacrifices of private affairs which an acceptance of public trust would require, so as to ensure the services of the best citizens. On this plan, we would have in the Senate a permanent will, a weighty interest which would answer essential purposes. But is this a republican government, it will be asked? Yes, if all the magistrates are appointed and vacancies are filled by the people, or a process of election originating with the people. I am sensible that an Executive constituted as I propose would have in fact but little of the power and independence that

might be necessary. On the other plan of appointing him for seven years I think the Executive ought to have but little power. He would be ambitious, with the means of making creatures, and as the object of his ambition would be to prolong his power it is probable that in case of war he would avail himself of the emergency to evade or refuse a degradation from his place. An Executive for life has not this motive for forgetting his fidelity, and will therefore be a safer depository of power. It will be objected, probably, that such an Executive will be an *elective monarch*, and will give birth to the tumults which characterize that form of government. I will reply that *monarch* is an indefinite term. It marks not either the degree or duration of power. If this Executive magistrate would be a monarch for life, the other proposed by the Report from the Committee of the Whole would be a *monarch* for seven years. The circumstance of being elective is also applicable to both. It has been observed by judicious writers that elective monarchies would be the best if they could be guarded against the tumults excited by the ambition and intrigues of competitors. I am not sure that tumults are an inseparable evil. I rather think this character of elective monarchies has been taken rather from particular cases than from general principles. The election of Roman Emperors was made by the *army*. In Poland the election is made by great rival *princes*, with independent power and ample means of raising commotions. In the German Empire, the appointment is made by the Electors and Princes, who have equal motives and means for exciting cabals and parties. May not such a mode of election be devised among ourselves as will defend the community against these effects in any dangerous degree? I will read to the Committee a sketch of a plan which I should prefer to either of those under consideration. I am aware that it goes beyond the ideas of most members. But will such a plan be adopted out of doors? In return, I will ask, will the people adopt the other plan? At present they will adopt neither. But I see the Union dissolving or already dissolved. I see evils operating in the States which must soon cure the people of their fondness for democracies. I see that a great progress has been

already made, and is still going on, in the public mind. I think, therefore, that the people will in time be unshackled from their prejudices, and whenever that happens they will themselves not be satisfied at stopping where the plan of Mr. Randolph would place them, but be ready to go as far at least as he proposes. I do not mean to offer the paper I have sketched as a proposition to the Committee. It is meant only to give a more correct view of my ideas and to suggest the amendments which I should probably propose to the plan of Mr. Randolph in the proper stages of its future discussion."

With this preliminary explanation he then proceeded to submit the outline of a plan which, in effect, carried out his view of assimilating the new government to the English Constitution.

According to this plan, the legislature was to consist of two branches, of which the first, called the Assembly, was to consist of persons elected to serve for three years. The Senate was to consist of persons elected for an indefinite tenure of office, themselves to be selected by electors chosen for that purpose by the people. The supreme Executive authority was to be a "Governor," who likewise was to serve for life, and he was also to be elected by electors. The Executive was to have a negative on all laws about to be passed *and upon the execution of all laws already passed*. The Senate was to have the sole power to declare war and of approving or rejecting all appointments of officers except the heads of the departments of finance, war, and foreign affairs. The judicial authority of the nation was to be vested in judges who would sit for life, and the Congress could institute other courts in each State "for the determination of all matters of general concern." Under Clause X, all laws of the particular States which were contrary to the Constitution or laws of the United States were to be void, "and the better to prevent such laws being passed the Governor or President of each State shall be appointed by the General Government and shall have a negative upon the laws about to be passed in the State of which he is the Governor or President."

Having read his plan, he proceeded to explain it in detail

and the Convention then adjourned, probably gasping with amazement or possibly struggling to suppress yawns.

Apparently some of the delegates understood his speech, not unnaturally, to advocate the virtual abolition of the States, for on the next day Mr. Hamilton corrected this misunderstanding by saying:

“By an abolition of the States I meant that no boundary could be drawn between the National and State Legislatures and that the former must therefore have *indefinite* authority. If it were limited at all, the rivalry of the States would gradually subvert it. As States I think they ought to be abolished, but I admit the necessity of leaving in them subordinate jurisdictions.”

Before leaving the Convention on June 29th, Mr. Hamilton rendered real service to the Delegates in calling their attention to the inevitable effects of a failure to create an efficient central government. Concluding an able speech on the disputed question of equality, he said, with great force and feeling:

Some of the consequences of a dissolution of the Union, and the establishment of partial confederacies, have been pointed out. I would add another of a most serious nature. Alliances will immediately be formed with different rival and hostile nations of Europe, who will foment disturbances among ourselves, and make us parties to all their own quarrels. Foreign nations having American dominion are, and must be, jealous of us. Their representatives betray the utmost anxiety for our fate, and for the result of this meeting, which must have an essential influence on it. It has been said that respectability in the eyes of foreign nations is not the object at which we aim, that the proper object of republican government is domestic tranquillity and happiness. This is an ideal distinction. No government could give us tranquillity and happiness at home, which did not possess sufficient stability and strength to make us respectable abroad. This is the critical moment for forming such a government. We run every risk in trusting to future amendments. As yet we retain the habits of union. We

are weak, and sensible of our weakness. Henceforward, the motives will become feebler and the difficulties greater. It is a miracle that we are now here, exercising our tranquil and free deliberations on the subject. It would be madness to trust to future miracles. A thousand causes must obstruct a reproduction of them.

If Hamilton's part in the Convention was not a considerable one, and was naturally proportioned to his years and public standing at that time, his services subsequent to the Convention in procuring its ratification not only by the State of New York but by other States cannot well be exaggerated. It was not only a brilliant mind but a great soul that led him, although disappointed in the new Constitution, to throw the weight of his influence in the scales; and if his speeches in the Convention are not remarkable in thought, yet it cannot be questioned that The Federalist papers, of the greater part of which he was the author, are the classic commentaries on the Constitution, and collectively form one of the most acute studies of the science of government in the literature of any country. Moreover, it was one thing to formulate a Constitution and another to put it into working operation, and probably America never had a more brilliant administrator than Mr. Hamilton, when, as the first Secretary of the Treasury, he started the machinery of the Federal Government into operation.

He was a very great man, and his undisputed greatness does not require the excessive laudations of his biographers. Who can question that his plan for the new Constitution was not in harmony with the democratic genius of America? Hamilton's Governor would have been not dissimilar to Louis XIV, and could have said with him, "*L'état, c'est moi!*" The Senate also served for life, and was obviously an imitation House of Lords. The only concession which Hamilton made to democracy was an elective house of representatives. Thinly veiled, his plan contemplated an elective king with greater powers than those of George III, a House of Lords without the hereditary principle and a popular House of Commons with a limited tenure.

Hamilton's plan was never taken seriously and, so far as

the records show, was never afterwards considered. His colleagues were too shrewd to ignore the fact that there was no magic in the name "Governor." They knew that a dictator would be a dictator although called "Lord Protector," a First Consul, a King or an Emperor. The essential thing was his power and George the III would have asked no more than that accorded to Hamilton's Governor. His admirers have given great praise to his work in the federal Convention. His real contribution lay in the fact that he had the vision to advocate a National Government instead of an impotent league of States and that when the Constitution was finally drafted and offered to the people, while he regarded it as a "wretched makeshift," to use his own expression, yet he was broad and patriotic enough to surrender his own views and advocate its adoption.

Hamilton's radical speech of June 18th returned—as radical speeches are apt to do—to plague the speaker; for, in the political contests of the first years of the nineteenth century, Hamilton was attacked by rumors that, in the Constitutional Convention, he had advocated a monarchical form of government. In a letter to Timothy Pickering, dated September 16, 1803, Hamilton answered his opponents.

After explaining that he had advocated not an "unlimited, but a defeasible, tenure" of office, Hamilton said:

"And I may add, that in the course of the discussions in the Convention, neither the propositions thrown out for debate, nor even those voted in the earlier stages of deliberation were considered as evidences of a definitive opinion in the proposer or voter. It appeared to me to be in some sort understood, that with a view to free investigation, experimental propositions might be made, which were to be received merely as suggestions for consideration. Accordingly, it is a fact, that my *final* opinion was against an Executive during good behaviour, on account of the increased danger to the public tranquillity incident to the election of a Magistrate of this degree of permanency. In the plan of a Constitution, which I drew up while the Convention was sitting, and which I communicated to Mr. Madison *about the close of it, perhaps a day*

or two after, the office of President has no greater duration than for three years."

This explanation is not altogether convincing. It would have surprised Hamilton's colleagues to know that their deliberate conclusions, as expressed in the debates of the Convention, were only tentative and "without prejudice." Hamilton does not deny that in his speech of June 18, he advocated a President for life with the sweeping powers of a monarch. His "Governor" differed from a king, in being elective and subject to removal by impeachment only. If his sagacity were questionable, his sincerity and courage are worthy of admiration. Hamilton was never a demagogue.

His eulogists have suggested that his inactivity in the Convention was due to the fact that, as a minority member of the New York delegation, he could not freely express his views as those of New York. The explanation is unconvincing; for his differences with his colleagues did not prevent him from making his radical speech of June 18th and suggesting a preposterous scheme of government, and, when his colleagues later seceded from the Convention and left Hamilton as the sole representative of New York, his prolonged absences and inactivity only increased. Hamilton clearly wished to impose an imitation monarchy upon the American people, not necessarily for love of that form of government, but on account of his intense distrust of the people, whom he once called "a great beast." To Jefferson, the people was an archangel,—infallibly wise and divinely good. To Hamilton, the people was a Caliban, with bestial propensities and only a glimmer of reason. Both were wrong.

The probability is, as already indicated, that, when the Convention ignored Hamilton's proposal for an elective monarchy and refused even to refer it to the Committee of Detail for consideration, Hamilton's interest in the Convention became lukewarm, and that this explains his prolonged absences and his sporadic activity. Apparently his one contribution to the details of the Convention was the Electoral College,—and this was its worst folly and has proved its greatest failure.

CHAPTER IX

NEARING THE CRISIS

"Cowards do not count in battle."—Euripides.

AS the debate proceeded, the crisis precipitated by the seemingly insoluble differences between the great and little States became more acute. The smaller States contended that the Convention was transgressing its powers, and they demanded that the credentials of the various members be read. In this there was technical accuracy, for the delegates had been appointed to revise the Articles of Confederation and not to adopt a new Constitution. A majority of the Convention, however, insisted upon proceeding with the consideration of a new Constitution, and their views prevailed. It speaks well for the honor of the delegates that although their differences became so acute as to lead at times to bitter expressions, neither side divulged them to the outside public. The smaller States could easily have ended the Convention by an appeal to public opinion, which was not then prepared for a "consolidated union," but they were loyal enough to fight out their quarrels within the walls of the convention hall.

It must not be supposed that the contending parties in the Convention had been developed as a result of the debate upon the Virginia plan. These parties were clearly defined before the Convention began. They had begun with the first Continental Congress, for the Provisional Government soon disclosed the gross inequality of allowing the thirteen Colonies, which differed so greatly in wealth and population, an equal voice in the national affairs. This inequality was accepted as an inevitable incident to a war which was conducted by an alliance and not by a unified nation. The conception of equality was inseparable from that of sovereignty, and after the Dec-

laration of Independence each colony was morbidly conscious of its new dignity as an independent nation. As the war progressed and the contributions of money and men by the different States varied, not merely proportionately but in varying degrees of loyalty to the common cause, the unfairness of allowing a colony which contributed few men and less money the same vote as a colony which taxed its resources of treasure and men to the utmost, became more glaring.

Moreover, the larger States were not unconscious of their superiority to the smaller. The former class consisted of Massachusetts, Pennsylvania and Virginia, and they as clearly overshadowed the smaller States as England, France and Italy today overshadow Belgium, Greece and Poland, and with the same results. This conscious sense of superiority was further affected by the possibility of growth, due to size and geographical position. Rhode Island, Connecticut, New Jersey and Delaware were not only relatively small States, but hemmed in as they were, their possibilities of future growth were very limited. On the other hand, the larger States, each of which was territorially a great empire, had unlimited possibilities of growth, and as the Constitution was to be a permanent form of government and not a temporary device, it is not unnatural that when the Convention was formed to revise the Articles of Confederation the larger States, which believed that in the future the present disparity would only increase, looked askance at the suggestion that there should be for all time an equality of political power between larger States with an illimitable future and smaller States which had little possibility of considerable growth, if any. It was this consideration that prompted Georgia and the two Carolinas, although then small in number and resources, to take sides on most occasions with Virginia, Massachusetts and Pennsylvania, for these southern States contained at that time an undetermined stretch of territory, which now includes many other States, and they looked forward to a time when with territories that were as large as most European States they could have a similar growth.

The contest between the larger and the smaller States was

therefore as inevitable as was the later contest between the industrial States of the North and the slave-holding States of the South. In each case the problem was to solve the difficulty without war. In the former case, it was successful; in the latter case, unhappily it was unsuccessful.

The success of the former experiment was due to two purely fortuitous circumstances. Had all of the thirteen colonies participated in the Federal Convention, the smaller States would have had a large majority and would have at all times outvoted the effort of the larger States to create an efficient central government. Even with Georgia and the two Carolinas, the three larger States, Massachusetts, Pennsylvania and Virginia were in a minority of the original thirteen States.

Fortunately, Rhode Island refused to enter the Convention at all, and while New Hampshire did not refuse to participate its resources were so impoverished that it had not the money to send any delegates until the Convention had been some months in session. Only eleven States were at first represented in the Convention, and the larger States could command the majority as long as they could hold the votes of their ambitious southern neighbours (the Carolinas and Georgia), whose confidence in their future had, as stated, led them to align themselves with the larger States. This alignment was so uncertain that neither party had at any time an assured majority. Tie votes were not uncommon and the fortunes of war fluctuated between the National Party and the States' Rights Party as the larger States were deserted from time to time by one or more of their smaller allies.

The fortunes of the battle were further affected by the occasional absence of one or more of the delegates, for some of the States, as, for example, Maryland, had only two delegates and when they differed the vote of the State could not be cast. When therefore one of two disagreeing delegates was absent, it enabled the remaining delegate to cast the vote of the State, and this frequently happened under the most critical circumstances.

Another and equally fortunate circumstance was the enforced absence from the Convention of the leaders of the radical ele-

ment in the country, then coming into existence and becoming self-conscious. Some of the philosophical radicals had been carried away with the political philosophy of the Encyclopædists in France, and had their influence been felt in the Convention it is not impossible that it would have terminated, as did the Assembly of Notables, then meeting in France, in a violent revolution. In the latter part of the Eighteenth Century the spirit of revolt was in the air and the very foundations of society were about to be sapped by the French Revolution.

With this element it was not a question of the relative power of the States and the Nation, but rather a revolt of the people against any form of government which limited their activities.

The greatest of the philosophical radicals was Thomas Jefferson. A very great leader, he united strength of intellect with an emotional idealism that made him the greatest apostle of the democratic spirit. That his powerful and finely educated mind would have been of value in the Convention cannot be questioned, but his somewhat visionary idealism would have led him to propose many novel expedients in government which would have destroyed the simplicity of the Constitution and impaired its efficiency. Had he been a delegate his influence would have been immeasurable, for the eloquent author of the Declaration of Independence would not have lacked followers even in that conservative Convention. He was a natural politician in the best sense of the word and the great source of his strength was his ability to appeal to the popular imagination, and, judging by his subsequent career, it may be questioned whether, if he had been in the Convention, its secrets would have been kept inviolate. His political methods were too often subterranean. Although a Virginian, he would have espoused in all probability the cause of the smaller States, as he was always jealous of governmental power. His unequalled sagacity as a leader of the people and his implicit faith in their judgment would probably have induced him in the critical hours of the Convention to appeal to public opinion, and had this been the case the Convention would have come to a disastrous end. Fortunately, Jefferson

was in France, and therefore could not attend the Convention. Although absent he rendered no inconsiderable service to the cause of constitutional government, for it was partly at his instance that the Bill of Rights, consisting of the first ten amendments, was adopted. But his presence in the Convention would probably have had as disastrous effect as marked his membership in Washington's Cabinet.

It was also very fortunate that two other leaders in the Revolution were also absent, for Samuel Adams and Patrick Henry both declined to participate. As a fiery and impassioned agitator, Adams would have added little to the careful deliberations of the Convention. We know what Patrick Henry's attitude would have been, for when the Convention was promulgated it had with the exception of Luther Martin no more bitter opponent than the eloquent Virginian. As nearly all the great conclusions of the Convention were reached by an almost evenly divided vote, it is easy to understand how the wise decisions which were generally reached would have been frustrated, if Patrick Henry had taken the floor and swept his audience with his "torrents of sublime eloquence."

The absence of those, who like Jefferson, Adams and Henry were either from philosophical considerations or class consciousness advanced radicals, was the salvation of the Convention.

Luther Martin tells us in his statement to the Maryland legislature that there were three parties in the Convention. While his characterisation of them discloses his strong partisanship, yet it is of value in showing the factions as viewed by the leader of one of them. He classifies them as follows:

One party, whose object and wish it was to abolish and annihilate all State governments, and to bring forward one general government, over this extensive continent, of a monarchical nature, under certain restrictions and limitations. Those who openly avowed this sentiment were, it is true, but few; yet it is equally true, Sir, that there was a considerable number, who did not openly avow it, who were by myself, and many others of the Convention, considered as being in reality favorers of that sentiment; and, acting upon those principles, covertly en-

deavoring to carry into effect what they well knew openly and avowedly could not be accomplished.

The second party was not for the abolition of the State governments, nor for the introduction of a monarchical government under any form; but they wished to establish such a system, as could give their own States undue power and influence in the government over the other States.

A third party was what I considered truly federal and republican; this party was nearly equal in number with the other two, and was composed of the delegations from Connecticut, New York, New Jersey, Delaware, and in part from Maryland; also of some individuals from other representations. This party, Sir, were for proceeding upon terms of *federal equality*; they were for taking our present *federal system* as the basis of their proceedings, and, as far as experience had shown us that there were defects, to remedy those defects; as far as experience had shown that other powers were necessary to the federal government, to give those powers. They considered this the object for which they were sent by their States, and what their States expected from them; they urged, that, if, after doing this, experience should show that there still were defects in the system (as no doubt there would be), the same good sense that induced this Convention to be called, would cause the States, when they found it necessary, to call another; and, if that Convention should act with the same moderation, the members of it would proceed to correct such errors and defects as experience should have brought to light. That, by proceeding in this train, we should have a prospect at length of obtaining as perfect a system of federal government, as the nature of things would admit.

Of the first party thus characterised by Martin with some exaggeration Alexander Hamilton was the leader. He had a few sympathizers, like Gouverneur Morris, but no supporters, for he was the whole party.

The leaders on the floor of the second party were James Madison, Edmund Randolph and James Wilson, but its real leaders were George Washington and Benjamin Franklin.

The leaders of the third party were undoubtedly Luther Martin and George Mason.

The strategy of the fight which was precipitated from the very beginning was of extraordinary interest. The real conflict was between the second and third parties as characterised by Martin. Neither of these could be certain of a victory. They may be called, and will be referred to hereafter, as the National Party and the States' Rights Party. While the Nationalists were apparently in the minority, yet they had in their favor the potent argument of the desperate conditions of the times. Upon the other hand the States' Rights Party had the advantage of superiority in numbers and the powerful traditions of the past. It was a contest between the past and the future, between traditions and the inexorable demands of economic necessity.

Neither side had sufficient confidence to precipitate the issue at the beginning of the Convention. Each moved with great caution. Had the Nationalists at that time submitted a concrete plan of the Constitution based upon their fifteen abstract propositions, it would unquestionably have been rejected or the Convention dissolved.

On the other hand, the States' Rights Party could not safely submit an alternative scheme of government because its inadequacy to the critical conditions of the times would become immediately apparent.

The Nationalists won the first skirmish by the rule of secrecy, for if the States' Rights Party had defeated this provision they would have been omnipotent in the Convention.

The Nationalists preferred to open the fight by first submitting abstract propositions, obviously to feel their way cautiously and see what plan of government could finally be submitted with some prospect of success. The States' Rights Party accepted this plan as advantageous for their own interests and the reason is given by Luther Martin in his explanation to the Maryland legislature as follows (p. 174):

"Hopes were formed, that the farther we proceeded in the examination of the resolutions, the better the House

might be satisfied of the impropriety of adopting them, and that they would finally be rejected by a majority of the committee; if on the contrary, a majority should report in their favor, it was considered, that it would not preclude the members from bringing forward and submitting any other system to the consideration of the Convention; and accordingly, while those resolves were the subject of discussion in the committee of the whole House, a number of the members, who disapproved them, were preparing *another system, such as they thought more conducive to the happiness and welfare of the States.*"

CHAPTER X

THE CRISIS

*"Once to every man and nation comes the moment to
decide
In the strife of truth with falsehood for the good or
evil side."*

—Lowell.

AT times the debate became bitter in the extreme. James Wilson, a delegate of Pennsylvania and a Scotchman by birth and education, turning to the representatives of the little States, passionately said:

"Will you abandon a country to which you are bound by so many strong and enduring ties? Should the event happen, it will neither stagger my sentiments nor duty. If the minority of the people refuse to coalesce with the majority on just and proper principles, if a separation must take place, it could never happen on better grounds."

He referred to the demand of the larger States that representation should be proportioned to the population. To this Bedford, of Delaware, as heatedly replied:

"We have been told with a dictatorial air that this is the last moment for a fair trial in favour of good government. It will be the last, indeed, if the propositions reported by the committee go forth to the people. The large States dare not dissolve the Convention. If they do, the small ones will find some foreign ally of more honor and good faith, who will take them by the hand and do them justice."

Finally, the smaller States gave their ultimatum to the larger States that unless representation in both branches of the proposed legislature should be on the basis of equality—each State, whether large or small, having one vote—they would forthwith leave the Convention. An eye-witness says that, at that moment, Washington, who was in the chair, gave old Doctor Franklin a significant look. Franklin arose and moved an adjournment for three days, with the understanding that the delegates should confer with those with whom they disagreed rather than with those with whom they agreed.

Posterity is fortunate in having a vivid picture of this scene, one of the most critical in the history of America, by one who was in the Convention, and while the account was written out a number of years after the events which are narrated, it shows the strong impression which they made upon a keen and alert young mind. The following account was reduced to writing by William Steele, who had the story from the lips of Jonathan Dayton, the youngest member of the Convention. Its substantial accuracy is corroborated by Madison's Debates, although in one detail, that of the Chaplain, Dayton's memory of the great event of his youth was probably inaccurate, for no Chaplain was secured to invoke divine help.

“When the details of the House of Representatives were disposed of, a more knotty point presented itself in the organization of the Senate. The larger States contended that the same ratio, as to states, should be common to both branches of the legislature; or, in other words, that each State should be entitled to a representation in the Senate, (whatever might be the number fixed on) in proportion to its population, as in the House of Representatives. The smaller States, on the other hand, contended that the House of Representatives might be considered as the guardian of the liberties of the people, and therefore ought to bear a just proportion to their numbers; but that the Senate represented the sovereignty of the States, and that as each State, whether great or small, was equally an independent and sovereign State, it ought, in this branch of the legislature, to have

equal weight and authority; without this, they said, there could be no security for their equal rights—and they would, by such a distribution of power, be merged and lost in the larger States.

This reasoning, however, plain and powerful, had but little influence on the minds of delegates from the larger States—and as they formed a large majority of the Convention, the question, after passing through the forms of debate, was decided that each State should be represented in the Senate in proportion to its population.

When the Convention had adjourned over to the next day, the delegates of the four smallest States, i. e., Rhode Island, (*sic*) Connecticut, New Jersey, and Delaware, convened to consult what course was to be pursued in the important crisis at which we had arrived. After serious investigation, it was solemnly determined to ask for a reconsideration the next morning; and if it was not granted, or if, when granted, that offensive feature of the Constitution could not be expunged, and the smaller States put upon an equal footing with the largest, *we would secede from the Convention, and, returning to our constituents, inform them that no compact could be formed with the large States, but one which would sacrifice our sovereignty and independence.*

I was deputed to be the organ through which this communication should be made—I know not why, unless it be that young men are generally chosen to perform rash actions. Accordingly, when the Convention had assembled, and as soon as the minutes of the last sitting were read, I arose and stated the view we had taken of the organization of the Senate—our desire to obtain a reconsideration and suitable modification of that article; and, in failure thereof, *our determination to secede from the Convention, and return to our constituents.*

This disclosure, it may readily be supposed, produced an immediate and great excitement in every part of the house! Several members were immediately on the floor to express their surprise, or indignation! They represented that the question had received a full and fair investigation, and had been definitively settled by a very large majority. That it was altogether unparliamentary and unreasonable,

for one of the minority to propose a reconsideration, at the moment their act had become a matter of record, and without pretending that any new light could be thrown on the subject. That if such a precedent should be established, it would in future be impossible to say when any one point was definitively settled; as a small minority might at any moment, again and again, move and obtain a reconsideration. They therefore hoped the Convention would express its decided disapprobation by passing silently to the business before them.

There was much warm and some acrimonious feeling exhibited by a number of the speeches—a rupture appeared almost inevitable, and the bosom of Washington seemed to labor with the most anxious solicitude for its issue. Happily for the United States, the Convention contained some individuals possessed of talents and virtues of the highest order, whose hearts were deeply interested in the establishment of a new and efficient form of government; and whose penetrating minds had already deplored the evils which would spring up in our newly established republic, should the present attempt to consolidate it prove abortive. Among those personages, the most prominent was Dr. Franklin. He was esteemed the Mentor of our body. To a mind naturally strong and capacious, enriched by much reading and the experience of many years, he added a manner of communicating his thoughts peculiarly his own—in which simplicity, beauty, and strength were equally conspicuous. As soon as the angry orators, who preceded him had left him an opening, the doctor rose, evidently impressed with the weight of the subject before them, and the difficulty of managing it successfully. He said:

‘We have arrived, Mr. President, at a very momentous and interesting crisis in our deliberations. Hitherto our views have been as harmonious, and our progress as great, as could reasonably have been expected. But now an unlooked for and formidable obstacle is thrown in our way, which threatens to arrest our course, and, if not skilfully removed, to render all our fond hopes of a Constitution abortive. The ground which has been

taken by the delegates of the four smallest States, was as unexpected by me, and as repugnant to my feelings, as it can be to any other member of this Convention. After what I thought a full and impartial investigation of the subject, I recorded my vote in the affirmative side of the question, and I have not yet heard anything which induces me to change my opinion. But I will not, therefore, conclude that it is impossible for me to be wrong! I will not say that those gentlemen who differ from me are under a delusion—much less will I charge them with an intention of needlessly embarrassing our deliberations. It is possible some change in our late proceedings ought to take place upon principles of political justice; or that, all things considered, the majority may see cause to recede from some of their just pretensions, as a matter of prudence and expediency. For my own part, there is nothing I so much dread, as a failure to devise and establish some efficient and equal form of government for our infant republic. The present effort has been made under the happiest auspices, and has promised the most favorable results; but should this effort prove vain, it will be long ere another can be made with any prospect of success. Our strength and our prosperity will depend on our unity; and the secession of even four of the smallest States, interspersed as they are, would, in my mind, paralyze and render useless, any plan which the majority could devise. I should therefore be grieved, Mr. President, to see matters brought to the test, which has been, perhaps too rashly threatened on the one hand, and which some of my honored colleagues have treated too lightly on the other. I am convinced that it is a subject which should be approached with caution, treated with tenderness, and decided on with candor and liberality.

It is, however, to be feared that the members of this Convention are not in a temper, at this moment, to approach the subject in which we differ in this spirit. I would, therefore, propose, Mr. President, that, without proceeding further in this business at this time, the Convention shall adjourn for three days, in order to let the present ferment pass off, and to afford time for a more full, free, and dispassionate investigation of the subject;

and I would earnestly recommend to the members of this Convention, that they spend the time of this recess, not in associating with their own party, and devising new arguments to fortify themselves in their old opinions, but that they mix with members of opposite sentiments, lend a patient ear to their reasonings, and candidly allow them all the weight to which they may be entitled; and when we assemble again, I hope it will be with a determination to form a Constitution, if not such an one as we can individually, and in all respects, approve, yet the best, which, under existing circumstances, can be obtained.'

(Here the countenance of Washington brightened, and a cheering ray seemed to break in upon the gloom which had recently covered our political horizon.)

The Doctor continued:

'Before I sit down, Mr. President, I will suggest another matter; and I am really surprised that it has not been proposed by some other member at an earlier period of our deliberations. I will suggest, Mr. President, the propriety of nominating and appointing, before we separate, a chaplain to this Convention, whose duty it shall be uniformly to assemble with us, and introduce the business of each day by an address to the Creator of the universe, and the Governor of all nations, beseeching Him to preside in our council, enlighten our minds with a portion of heavenly wisdom, influence our hearts with a love of truth and justice, and crown our labors with complete and abundant success!' *

The Doctor sat down, and never did I behold a countenance at once so dignified and delighted as was that of Washington, at the close of this address. Nor were the members of the Convention generally less affected. The words of the venerable Franklin fell upon our ears with a weight and authority, even greater than we may suppose an oracle to have had in a Roman senate! A

* This is Dayton's recollection of Franklin's remarks as to divine intercession, but his full speech is in Madison's Debates and is quoted hereafter.

silent admiration superseded, for a moment, the expression of that assent and approbation which was strongly marked on almost every countenance; I say almost, for one man was found in the Convention, Mr. H—, from —,* who rose and said, with regard to the first motion of the honorable gentleman for an adjournment, he would yield his assent; but he protested against the second motion for the appointment of a chaplain. He then commenced a high-strained eulogium on the assemblage of wisdom, talent, and experience, which the Convention embraced; declared the high sense he entertained of the honor which his constituents had conferred upon him, in making him a member of that respectable body; said he was confidently of opinion that they were competent to transact the business which had been entrusted to their care—that they were equal to every exigency which might occur; and concluded by saying, that therefore he did not see *the necessity of calling in foreign aid!*

Washington fixed his eye upon the speaker, with a mixture of surprise and indignation, while he uttered this impertinent and impious speech, and then looked around to ascertain in what manner it affected others. They did not leave him a moment to doubt; no one deigned to reply, or take the smallest notice of the speaker, but the motion for appointing a chaplain was instantly seconded and carried; whether under the silent disapprobation of Mr. H—, or his solitary negative, I do not recollect.† The motion for an adjournment was then put and carried unanimously, and the Convention adjourned accordingly.

The three days of recess were spent in the manner advised by Doctor Franklin; the opposite parties mixed with each other, and a free and frank interchange of sentiments took place. On the fourth day we assembled again, and if great additional light had not been thrown on the subject, every unfriendly feeling had been expelled; and a spirit of conciliation had been cultivated, which promised, at least, a calm and dispassionate reconsideration of the subject.

* Obviously, Alexander Hamilton.

† The Convention, according to Madison, adjourned without taking any action on the motion and purposely so.

"As soon as the chaplain had closed his prayer,* and the minutes of the last sitting were read, all eyes were turned to the Doctor. He rose, and in a few words stated, that during the recess he had listened attentively to all the arguments pro and con, which had been urged by both sides of the house; that he had himself said much, and thought more on the subject; he saw difficulties and objections, which might be urged by individual States against every scheme which had been proposed; and he was now, more than ever, convinced that the Constitution which they were about to form, in order to be just and equal, must be formed on the basis of compromise and mutual concession. With such views and feelings, he would now move a reconsideration of the vote last taken on the organization of the Senate. The motion was seconded, the vote carried, the former vote rescinded, and by a successive motion and resolution, the Senate was organized on the present plan."

Dayton's account is not wholly accurate but its substantial truth is probable. A recess was taken, as Dayton narrates, and before the Convention adjourned on July 2, a vote was taken as to equality of representation in the Senate but resulted in a tie vote. It was then decided to appoint a committee of eleven, one from each State, to consider the question, and this committee reported three days later, on July 5, in favour of proportionate representation in the House and equal representation in the Senate. This suggestion, which finally saved the situation, was due to that wise old utilitarian philosopher, Franklin, who, with his homely wisdom, suggested to the distracted Convention that "when a joiner wants to fit two boards, he takes off with his plane the uneven parts from each side, and thus they fit. Let us do the same, and as an expedient elect the Senate by the States equally."

Possibly, the old Doctor, in his homely but tactful analogy, was also thinking of his two-headed snake. However, a

* Possibly, a chaplain may have been called in a few days later, of which the Minutes and Madison's Debates make no note. Dayton's memory, as that of a young man narrating the greatest event of his life, cannot be lightly disregarded.

vehement and passionate debate again ensued. Vague references were made to the sword as the only method of solving the difference.

On July 9 the committee again reported, maintaining the principle of their recommendation, while modifying its details, and without reaching a decision—for neither party was ready to decide or dissolve—the debate then turned upon the question to what extent the negro slaves should count in estimating population for the purposes of proportionate representation in the lower House. Various suggestions were made to base representation upon wealth or taxation and not upon population. For several days the debate lasted during very heated weather, but on the night of July 12 the temperature dropped and with it the emotional temperature of the delegates.

The reader should not pass the narration of this acute crisis without reading Franklin's beautiful and touching appeal for conciliation. It seems probable that Franklin's speech—as remembered by Dayton and his prepared speech as recorded by Madison—were two parts of one speech, the latter being the peroration of an extemporized address.

Erroneously supposed by many to be an atheist, he made at the time which Dayton so graphically records, the following solemn and beautiful appeal to their better natures:

“The small progress we have made after four or five weeks' close attendance and continual reasonings with each other—our different sentiments on almost every question, several of the last producing as many noes as ayes,—is, methinks, a melancholy proof of the imperfection of the human understanding. We indeed seem to feel our own want of political wisdom, since we have been running about in search of it. We have gone back to ancient history for models of government, and examined the different forms of those Republics which, having been formed with seeds of their own dissolution, now no longer exist. And we have viewed modern States all round Europe, but find none of their constitutions suitable to our circumstances.

In this situation of this Assembly, groping as it were in the dark to find political truth, and scarce able to distinguish it when presented to us, how has it happened, Sir, that we have not hitherto once thought of humbly applying to the Father of Lights to illuminate our understandings? In the beginning of the contest with Great Britain, when we were sensible of danger, we had daily prayer in this room for the divine protection. Our prayers, Sir, were heard, and they were graciously answered. All of us who were engaged in the struggle must have observed frequent instances of a superintending Providence in our favor. To that kind Providence we owe this happy opportunity of consulting in peace on the means of establishing our future national felicity. And have we now forgotten that powerful Friend or do we imagine that we no longer need His assistance?

I have lived, sir, a long time, and the longer I live, the more convincing proofs I see of this truth: That *God governs in the affairs of men*. And if a sparrow cannot fall to the ground without His notice, is it probable that an empire can rise without His aid?

We have been assured, sir, in the sacred writings, that 'except the Lord build the House they labour in vain that build it.' I firmly believe this; and I also believe that without His concurring aid we shall succeed in this political building no better than the builders of Babel. We shall be divided by our little partial local interests; our projects will be confounded, and we ourselves shall become a reproach and byword down to future ages. And what is worse, mankind may hereafter from this unfortunate instance, despair of establishing governments by human wisdom and leave it to chance, war, and conquest.

I therefore beg leave to move that henceforth prayers imploring the assistance of Heaven, and its blessings on our deliberations, be held in this Assembly every morning before we proceed to business, and that one or more of the clergy of this city be requested to officiate in that service."

If we may trust Madison's very accurate notes, the resolution was not passed, partly on the ground that if it became

known to the public that the Convention had finally resorted to prayers it might cause undue alarm, but also because the Convention was by that time so low in funds that, as one of the members said, it did not have enough money to pay a clergyman his fees for the service. Probably the controlling reason was the Convention's indisposition to break its self-imposed rule of secrecy by contact with the outer world until the work was completed. Perhaps they thought that "God helps those who help themselves." It is also possible, as previously suggested, that the Convention at a later session did think better of Franklin's suggestion. Dayton may be right.

Washington at times grew very impatient with the slow progress of the Convention; for his absence from Mt. Vernon was, in view of his straightened circumstances, greatly to his prejudice, and he was a man of deeds rather than of words, and thus the interminable debates must have greatly distressed him. He writes to Knox on August 19, 1787:

"By *slow*, I wish I could add, and *sure* movements, the business of the Convention advances; but to say when it will end, or what will be the result, is more than I dare venture to do; and therefore shall hazard no opinion thereon. If something good does not proceed from the session, the defects cannot with propriety be charged to the hurry with which the business has been conducted, notwithstanding which many things may be forgot, some of them not well digested, and others, from the contrariety of sentiments with which such a body is pervaded, become a mere nullity; yet I wish a disposition may be found in Congress, the several State legislatures, and the community at large, to adopt the government, which may be agreed on in convention, because I am fully persuaded it is the best that can be obtained at the present moment under such a diversity of ideas as prevail."

At times he was not merely discouraged, but completely disheartened. When Hamilton left the Convention on June 29th Washington became more disheartened. However little he may have sympathized with Hamilton's extreme views, he yet had learned by their association in the Army to place great reliance

upon his young friend's vision and resourcefulness. On July 10, 1787, when the situation was darkest, he wrote the following letter to Hamilton:

"I thank you for your communication of the 3d. When I refer you to the state of the counsels, which prevailed at the period you left this city, and add that they are now if possible in a worse train than ever, you will find but little ground on which the hope of a good establishment can be formed. In a word, I almost despair of seeing a favorable issue to the proceedings of our Convention, and do therefore repent having had any agency in the business.

The men, who oppose a strong and energetic government, are in my opinion narrow-minded politicians, or are under the influence of local views. The apprehension expressed by them, that the people will not accede to the form proposed, is the *ostensible*, not the *real* cause of opposition. But, admitting that the present sentiment is as they prognosticate, the proper question ought nevertheless to be, Is it, or is it not, the best form? If the former, recommend it, and it will assuredly obtain, maugre opposition.

I am sorry you went away. I wish you were back. The crisis is equally important and alarming, and no opposition under such circumstances should discourage exertions till the signature is fixed. I will not at this time trouble you with more than my best wishes and sincere regards."

On July 16 the compromise was finally adopted of recognizing the claims of the larger States to proportionate representation in the House of Representatives, and recognizing the claims of the smaller States by according to them equal representation in the Senate. This great result was not effected without the first break in the Convention, for the delegates from New York carried out the threat of secession and left in disgust and never returned, with the exception of Hamilton, who occasionally attended subsequent sessions.

CHAPTER XI

THE DAWN

*"But no night is so utterly cheerless
That we may not look for the dawn."*

—Carey.

THE great fight of the Convention was over. Upon it, as upon a thread, had hung the destinies of America.

What would have happened, if the Convention had adjourned without a result, belongs to the "might-have-beens" of history. That civil war was anticipated in the event of failure is shown by the references in the debates to the sword and to the grim remark that tradition imputes to Washington that if the Constitution were not now adopted the next one would be written in blood.

It may be questioned whether any such result would, in fact, have taken place. An imperious economic necessity was welding the colonies together, and, apart from these material considerations, there was a powerful sentiment of unity which had resulted from one of the most potent ties, the blood-comradeship of arms. As Lincoln was afterwards to say at a similar crisis in American history:

"The mystic chords of memory, stretching from every battlefield and patriot grave to every living heart and hearthstone all over this broad land, will yet swell the chorus of the Union, when again touched, as surely they will be, by the better angels of our nature."

Had the Constitutional Convention failed, it is altogether probable that the existing government would have perished and that, for a time, the thirteen Colonies, either singly or in

groups, would have pursued their several destinies; but sooner or later the inevitable tendency towards consolidation would have had its effect.

Had the Union at a later period been destroyed, and the Republic been split in 1865 into two confederacies, it is altogether probable that before another generation had passed away, after much suffering and travail, the old Federal Government and the Southern Confederacy would have again united, for while, in that event, slavery would have been a gulf between them, yet forces were even then in operation that would have bridged that seemingly impassable gulf. The cause of the Union was secure when the last spike was driven in the Union Pacific Railroad, for it is held together today, not alone by a piece of parchment and red seals, but by the shining pathways of steel that cover America and the telegraph wires which, as antennæ, co-ordinate the vast energies of its people.

Recurring to the momentous struggle in the Constitutional Convention, who was the victor? the Nationalists or the States' Rights Party, the larger States or the smaller States?

The answer is that there was no victory for either party. For each party, as the event proved, it was, to use a now famous phrase, a "peace without victory."

Each group had won in part and lost in part, and the indecisive result of the struggle was a most fortunate circumstance, for had either party left the Convention with a humiliating sense of defeat it is altogether probable that the Constitution would never have been ratified by the people.

The Nationalists had entered the Convention with what then seemed to be the audacious purpose of creating a nation instead of a league of States. This they had accomplished, and to that extent the result was a victory for them and a defeat for the States' Rights Party. They had, however, made a long and valorous fight for the very equitable principle that the States should be represented in the Nation in some reasonable proportion to their relative greatness as measured either by population or property. In this they had lost.

It was not a partial defeat. From any practical standpoint it was a complete defeat. It is true that their contention had pre-

vailed in the constitution of the House of Representatives, but this was a barren victory in view of the fact that that body could pass no law without the concurrence of the Senate. As a chain cannot be stronger than its weakest link, similarly the distribution of power in the Congress cannot be different from that of either of its branches. Political equality of the smaller States with the greater States in the Senate is as effectual as if it prevailed also in the House of Representatives.

Moreover, to the Senate, as the representative of states' rights, there were given far greater powers and a longer tenure of office than that given to the House of Representatives. Apart from the fact that no law can be enacted without the concurrence of the Senate, it became the advisory body, whose advice and consent were necessary to the appointments of the Executive and to the ratification of any treaty.

This made the Senate peculiarly the "elder statesmen" of the Republic, and in this powerful body—with its control over legislation, executive appointments, and the foreign relations of the Republic—the States sat as equals without reference to their varying size.

Therefore, upon the great issue of the Convention, the little States had won a signal victory, but for reasons that they could not possibly anticipate the victory was to be a barren one. If in the subsequent history of America the division of parties had been between a group of the larger States and a similar group of the smaller States—as was the case in the Constitutional Convention—then the victory of the smaller States would have been overwhelming, for they would have virtually controlled the government.

Fortunately, the subsequent alignment of parties did not proceed along these lines. The divisions of opinion were to be largely sectional, and in each section there were both large and small States. Economic interests were speedily to be developed in an age of steam and electricity, which were to overshadow the purely political distinctions between the large and the small States. Had this not been so, the result would have been intolerable, for it is altogether improbable that the Republic would have survived, if its future contests had been

exclusively between the small States, solidly grouped together, and the large States similarly acting as a unit. If to-day any such alignment took place, and the larger States found themselves confronted by a combination of the smaller States, the result would be intolerable and dissolution would speedily follow.

Thus the smaller States had won their victory, although the price they paid for it was the creation of a nation, which was furthest from their thoughts; but, in turn, their victory was a barren one, for in winning their contest for equality in the new nation they gave to that nation powers which were destined to impair to a considerable extent the influence and authority of the States. The little States, without perceiving the inevitable tendency, gave to the nation without controversy an almost absolute power to tax and a plenary power to regulate interstate and foreign commerce. They did not appreciate, and could not appreciate, the inevitable result. Especially is this true of the commerce power, which has well been called the "sleeping giant" of the Constitution. When the Convention met, the only commerce which its members had in mind were the coastwise ships and those from foreign ports. Between the States commerce was negligible and consisted of little more than the passage of an occasional sailing sloop along the inland waterways and the crossing of State borders by post riders or horse-drawn vehicles. Silent and unseen forces were then at work which were to undo the effort of the States' Rights Party to limit the powers of the Federal Government. While the Convention was working, a Connecticut Yankee, John Fitch by name, was applying a recent discovery of the motive power of steam to the propulsion of a boat, and 3,000 miles away the same power was being utilized for land transportation, and was to culminate in the railroad. Of this no member of the Convention had any practical conception.

Quite apart from the Constitution, an economic unification of the country was to take place through the centripetal agencies of steam and electricity, and as a result of this inextricable intermingling of material interests the Federal Government in the exercise of its power to tax and regulate

commerce was destined to become of such overshadowing importance as to obscure both the practical power and the sentimental consciousness of the States.

Thus, the Nationalists, in the hour of their defeat, had in fact won a victory of which they were largely unconscious. Nevertheless, they had paid the heavy price of writing forever into the Constitution an equality between the States in the Senate without reference to their size or influence. They could reconcile themselves to the other concessions, as the power to amend remained, but the States' Rights Party completed their victory by forever forbidding,—except with unanimous consent,—any future change of this provision of the Constitution.

Such was the great concession that was made to secure the Constitution; and the only respect in which the Constitution to-day cannot be amended is that by express provision the equality of representation in the Senate shall never be disturbed. Thus it is that to-day some States, which have less population than some of the wards in the city of New York, have as many votes in the Senate as the great State of New York. It is unquestionably a palpable negation of majority rule, for a combination of the little States, whose aggregate population is not a fifth of the American people, can defeat the will of the remaining four-fifths. Pennsylvania and New York, with nearly one-sixth of the entire population of the United States, have only four in ninety-six votes in the Senate.

It will always be an interesting question to posterity whether the close and almost equal division of the two parties in the Convention was a blessing or a calamity. Neither party could at any time rely upon a majority, and a compromise was inevitable if the Convention was to formulate any Constitution. The final result of the Convention was three great compromises upon fundamental questions of principle and a number of minor compromises. If the population of one of the western mining States should ultimately shrink to 20,000, it would nevertheless at some distant day have the same representation in the Senate as the State of New York, which, conceivably, might then have a population of 20,000,000 of people. This seems to be a travesty not only on democracy but even any form of

political government, and in itself would superficially seem to justify the conclusion that it would have been better that the Convention had never met rather than it should meet under circumstances where no political point of view was sustained by a clearly preponderant vote.

Like many superficial conclusions, this view of the Constitutional Convention does not stand analysis. Far from it being a calamity, it was a positive blessing that no class of political theorists was in control of that Convention. If the world has ever since admired the results of their labors, it was not because they were such supremely wise men as to evolve a Constitution by intuition, but because, though an exceptionally able body of men, they were obliged to compose their differences, and the success of the Convention was due to the "golden mean" of political thought.

If the States' Rights Party had had a clearly preponderant majority of votes upon which they could rely, the result would have been a feeble enlargement of the Articles of Confederation. A nation would not have been created, but an impotent league of States would have been perpetuated. Had this been the case, it is altogether probable that after another period of disaster and disillusion the third attempt of the Founders of the Republic to establish a stable government would have come to grief.

In that event, either the colonies would have split up into two or more groups of States, or it is possible that, wearied of misrule and conscious of their own incapacity to create an independent nation, the colonies would have compromised their differences with the mother country and again become parts of the Empire. This was Hamilton's view, for he predicted that if the Constitution had failed, America would have returned to the imperial fold, with one of the sons of George III as a royal viceroy. This, in turn, would have set back the hands on the dial of progress at least a century, for the United States would never have had the same incomparable growth had it been a dominion of the British Empire.

Almost equally unfortunate would have been the result if the Nationalist Party had been assured control of the Convention.

In that event, it would undoubtedly have incorporated in the new Constitution the essential principles of the Virginia Plan, and nothing is clearer now than that the Virginia Plan, if it had been adopted in its integrity, could never have been successful. Its sixth clause empowered the National Legislature:

“to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation, *and to negative all laws passed by the several States contravening in the opinion of the National Legislature the Articles of Union* or any treaty subsisting under the authority of the Union, and to call forth the forces of the Union against any member of the Union failing to fulfill its duty under the Articles thereof.”

That plan marked a violent and unreasonable reaction against the disintegration of the Confederation. It went to the other and indefensible extreme and proposed a centralization of power beyond anything that had been dreamed of or that even in this day of economic centralization, through steam and electricity, would be dreamed of by the most advanced advocate of consolidation.

It is amazing that men like Washington, Franklin and Madison could have seriously proposed such a plan, and the fact that they did so is the strongest evidence of their contempt for the anarchy which then prevailed. In defending it, Madison said:

“A negative on State laws is the mildest expedient that can be devised for enforcing a national decree. Should no such precaution be engrafted, the only remedy would be coercion. The negative would render the use of force unnecessary. This prerogative of the general government is the great pervading principle that must control the centrifugal tendency of the States, which, without it, will continually fly out of their proper orbits and destroy the order and harmony of the political system.”

Madison naturally had no appreciation whatever, and could have had none, that the centrifugal tendencies to which he refers were about to yield to the powerful centripetal tendencies

of a mechanical civilization; but even if the age of the railroad, the steamship, the telegraph, the telephone, and the radio had never come and the colonies had become thirteen scattered States, between whom intercommunication was exceedingly difficult, it would on that account have been impractical to govern such disconnected colonies from a national capital. In that day it was true, as Frederick the Great had said, that a league of States between widely scattered and disconnected communities was impossible. Hamilton's gloomy predictions already quoted were not without foundation.

The folly of such a centralized government would have become even greater when the colonies had become connected through economic ties by railroad tracks and telegraph wires, but for a different reason. The marvelous growth of America, due to the mechanical civilization which was then beginning, would have made it altogether futile to govern a congeries of States in their local affairs from Washington. Even under our present system, the Federal Government is fast breaking down because of the inordinate pressure upon its machinery. Congress, notwithstanding its division of labor between congressional committees, in which most of the work of legislation is really done, finds it impossible to meet the demands of legislation within the restricted scope of the Federal Government, and this inordinate burden of impossible demands equally falls upon the Executive. If the Virginia plan had been adopted, and the system had remained until this day, the Congress and the President would not only be responsible for all the legislative and executive policies which concerned the Federal Government, but also for the far greater field of governmental energies which are reserved to the States. The legislatures of the forty-eight States, which at present constitute the Union, pass each year many thousands of laws. Under the Virginia plan, it would today be the duty of Congress and of the President to consider whether each of these laws was beyond the competence of the States and interfered with the harmony of the Union. This would have made the Congress the super-legislature for the United States, and its duties would not only have been to revise all the legislation of the States but, as the

Supreme Court, to determine whether the State laws were in conflict with the Constitution.

Had such a plan been adopted, the Republic would not have lasted twenty years. It is not likely that such a plan would ever have been submitted to the test of experience, for had it been a part of the Constitution as proposed to the people it would in all probability have been rejected.

Notwithstanding the price that the Nation paid for divided councils in the National Convention in the great compromises of the Constitution, such equal division, which gave no party a clear majority, must be regarded not only as an advantage but as a clear essential to the successful completion of the momentous work.

The Convention next turned its attention to the Executive and the manner of its selection, and upon this point there was the widest contrariety of view, but, fortunately, without the acute feeling that the relative power of the States had occasioned. The Constitution as framed provided that in each State electors equal to the whole number of senators and representatives from that State in Congress should be chosen; that those electors should meet in their respective States and vote by ballot for President; that the person who received the greatest number of votes, if a majority of all the votes cast, should be President, but that if no one received such majority the election should be made by the House of Representatives, the delegation from each State being entitled to one vote, and the House choosing one of the five highest on the list of persons voted for in the electoral college.

When this plan was formulated it was evidently assumed that many States would present favorite sons, no one of whom would receive the votes of a majority of the electors. National parties, with nominating conventions and other means for securing concerted action throughout the country, had not yet come into existence. The small States, therefore, were again given very great power when it was provided that, while the larger States should have power substantially in proportion to their population in the first instance, yet if no candidate received a majority of the votes upon the first ballot the election should

be subsequently by States, with each State, large or small, casting one ballot.

The Federalist (No. 68) declared:

"The process of election affords a moral certainty that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications. Talents for low intrigue and the little acts of popularity may alone suffice to elevate a man to the first honors in a single State; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union, or of so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of President of the United States."

Time has measurably verified this prediction. With few exceptions, our Presidents have been leaders of whom any nation could be proud.

Then the judiciary article was taken up, and there was much earnest discussion as to whether the new Constitution should embody the French idea of giving to the judiciary, in conjunction with the Executive, a revisory power over legislation. Three times the convention voted upon this dangerous proposition, and on one occasion it was only defeated by a single vote. Fortunately, the good sense of the Convention rejected a proposition, that had caused in France constant conflicts between the Executive and the Judiciary, by substituting the right of the President to veto congressional legislation, with the right of Congress, by a two-thirds vote of each House, to override the veto, and secondly by a power in the Judiciary to annul Congressional or State legislation, not on the grounds of policy, but on the sole ground of inconsistency with the paramount law of the Constitution. In this adjustment, the influence of Montesquieu was evident.

These and many practical details had resulted in an expansion of the fifteen proposals of the Virginia plan to twenty three.

Having thus determined the general principles that should

guide them in their labors, the Convention, on July 26 directed the Committee on Detail to embody these positions in the formal draft of a Constitution and adjourned until August 6 to await its report.

This Committee on Detail, which had been chosen by ballot on July 24, consisted of John Rutledge, afterwards a justice of the Supreme Court of the United States and for a short period the chief justice; Edmund Randolph, appointed by Washington to be the first Attorney General of the new nation; Nathaniel Gorham of Massachusetts, chairman of the Committee of the Whole of the Convention; Oliver Ellsworth, afterwards the draftsman of the Judiciary Act and the third Chief Justice of the United States; and James Wilson, of Pennsylvania, who also was afterwards a justice of the Supreme Court.

Their report, when finally completed, covered seven folio pages, and was found to consist of a Preamble and twenty-three Articles, embodying forty-three sections. The committee embodied some valuable suggestions which had occurred to them in their deliberations. The draft was the Constitution of the United States in embryo.

When the Committee on Detail had made its report on August 6, the Convention proceeded for over a month to debate it with the most minute care. Every day for five weeks, for five to seven hours, the members studied and debated with meticulous care every sentence of the proposed Constitution. Space does not suffice even for the barest statement of the many interesting questions which were thus discussed, but they nearly ran the whole gamut of constitutional government. Many fanciful ideas were suggested but with unvarying good sense they were rejected. Some of the results were, under the circumstances, curious. For example, although it was a convention of comparatively young men, and although the Convention could have taken into account the many successful young men then in public life in Europe—as, for example, William Pitt—they put a disqualification upon youth by providing that a Representative must be twenty-five years of age, a Senator thirty years of age, and a President thirty-five years

of age. When it was suggested that young men could learn by admission to public life, the sententious reply was made that, while they could, they ought not to have their education at the public expense.

While the great issue of the Convention had been determined, an issue which was then almost equally important, and which was one day to be of supreme and disastrous importance, consumed the time of the Convention.

That issue was slavery, and while the Convention had no thought of its abolition as an institution it had considerable difficulty in determining the effect which the slave population should have upon the machinery of the Government, especially in its relation to proportionate representation.

On August 22d this subject was debated with great ability and evidently with some feeling. Colonel Mason, himself a Virginian planter, vehemently denounced what he called "an infernal traffic," and seemed as in a vision to see the fratricidal war of 1861-65. He said:

"Slavery discourages arts and manufactures. The poor despise labor when performed by slaves. They prevent the immigration of whites, who really enrich and strengthen a country. They produce the most pernicious effect on manners. Every master of slaves is born a petty tyrant. They bring the judgment of Heaven on a country. As nations cannot be rewarded or punished in the next world, they must be in this. By an inevitable chain of causes and effects, Providence punishes national sins by national calamities. I lament that some of our Eastern brethren have, from a lust of gain, embarked in this nefarious traffic. As to the States being in possession of the right to import, this was the case with many other rights, now to be properly given up. I hold it essential in every point of view, that the General Government should have power to prevent the increase of slavery." (Madison's Debates, Vol. II, p. 579.)

Following this invective, to which a later time was to give a fearful verification, Mr. Ellsworth suggested that the Conven-

tion should go "further and free those already in the country."

Mr. Pinckney warned the Convention that any attempt to prohibit the importation of slaves would "produce serious objections to the Constitution," and his colleague of the same name from South Carolina confirmed this view.

The debate then largely turned upon the question whether the Federal Government should be given power in connection with its regulations of foreign commerce to forbid the further importation of slaves; and, again, a difficult issue was recommended to the Committee of the Whole and the Convention, with this Micawberesque method of adjusting an obligation, turned to other matters.

The Convention finally adjourned for the day in order to witness an experiment which, although they could not then perceive it, was to profoundly influence the result of their deliberations. On that day they had been discussing the proposed grant of power over navigation to the central government and its effect upon the possible importation of slaves, and now they were to witness, at the invitation of some public-spirited citizens of Philadelphia, an experiment on the banks of the Delaware of infinite importance.

CHAPTER XII

THE CONVENTION WITNESSES A GREAT EXPERIMENT

*"Soon shall thy arm, unconquer'd steam, afar
Drag the slow barge or drive the rapid car."*

—Erasmus Darwin.

IN some modest home in Philadelphia, possibly in a garret, there was then living a Connecticut Yankee who was fast winning a reputation for being a lunatic by telling all whom he met in the streets or in the coffee houses that he had conceived a plan of propelling a boat by other means than those of the human hands or the wind power of sails.

John Fitch was the son of a Connecticut farmer, and his craft, or "mystery," to use the ancient term, was that of a clockmaker. Stunted in his growth and limited in education, he had yet acquired a varied knowledge, which, however, had been of little service to him in procuring a livelihood. He was now in Philadelphia and was as poor in pocket but as inspired in his vision as young Franklin, when he, too, a penniless boy, had stepped on Market Street wharf; but Franklin's challenge to fate was that of a young man, while forty years of disillusion and disappointment had almost crushed Fitch, when he tried to enlist the interest of the people of Philadelphia in his great plan to revolutionize navigation by the utilization of steam power.

He tells us in his autobiography that when he was planning his steamboat he was ignorant that there was a steam engine on earth, and that when he subsequently learned that the motive power was not then a novelty he was "very much chagrined." While the steam engine had in 1787 been so far developed that it could be used as a powerful servant of man in pumping

water from mines, yet as a motive power in transportation it was unknown until Fitch saw the vision of such possible use.

To whom could he turn for encouragement and help with a greater assurance of sympathetic interest than to Doctor Franklin? The latter was the first of the long line of American inventors, and in some respects one of the most versatile. Carlyle has well named him the "Father of all the Yankees," and no faculty of his extraordinary mind was more keen than that of invention.

Fitch besought the American Philosophical Society, of which Franklin was then president, to give him an audience. It did so, and the ill-kempt and unprepossessing inventor submitted his rude models to the learned members of that body, but they were as little impressed as was the learned council of Salamanca with the epoch-making proposals of the inspired pilot of Genoa. Hearing nothing from the Society, he wrote a letter to Franklin, in which he expressed his belief that his invention would "answer for sea voyages as well as for inland navigation; in particular for packets where there may be a great number of passengers." He also expressed the opinion that "fuel for a short voyage would not exceed the weight of water for a long one," and that his proposed boat "would make head against the most violent tempests and thereby escape the dangers of a lee shore."

That Fitch's inspired vision made no impression upon Doctor Franklin is indicated by the fact that when the Doctor, six or seven weeks later, wrote a paper for the Philosophical Society on navigation he made no reference to Fitch's project, although a helpful word from him would probably have induced such support in Philadelphia that Fitch would not have lacked money, and if so, the final successful demonstration of the soundness of his plan might have long antedated Fulton's experiments on the Hudson.

Believing that so great a man as Doctor Franklin could not be indifferent to the immensity of the project, the poor inventor again waited on Doctor Franklin and asked him to give some written evidence of his faith in the invention. The Doctor, while apparently little impressed with the feasibility

of the plan, was stirred with pity for the poverty-stricken inventor, and, obedient to the impulses of his always kindly heart and perhaps remembering his own days of extreme poverty, he, although declining to subscribe to the project, offered Fitch a few dollars for his personal necessities. Fitch declined to accept the money as a gift, and Franklin, in turn, refused to permit him to regard it as a subscription, thus strikingly manifesting his lack of faith in the invention. Fitch left the Doctor's residence with the same feeling of indignation as Doctor Johnson left the residence of Lord Chesterfield. It is the attribute of genius that it is rarely discouraged, and Fitch declined to abandon his project even though the few dollars that he could borrow did not suffice to make more than a very clumsy experimental model.

He was rash enough to express the opinion that it might be possible "that the force of steam may be applied to great advantage to vessels from twenty tons burthen and upward," and he believed that a boat thus equipped might attain the speed of a twelve-oared barge, and to him it was an amazing thought that a boat might be propelled as rapidly through the water as a "stage wagon on land," and that in this way there would be a saving of "a great expense of horseflesh and feed." He predicted that in this way "great advantage will accrue to inland navigation, and in particular to the Mississippi and Ohio rivers, where the God of Nature knew their banks could never be traversed with horses," and he sagely foresaw that his boat might one day challenge the waves of the Atlantic, "which would soon overspread the wild forests of America with people, and make us the most opulent empire on earth."

He recognized that this vision of a future ocean commerce would be calculated to write him down as a madman.

He pathetically said:

"Pardon me, generous public, for suggesting ideas that cannot be digested at this day. What opinion future ages will have of them, time only can make manifest."

and sadly added:

“But I know, let these things be ever so well founded on reason and fact, at this day they cannot be but looked upon as but delusive and the effects of lunacy.”

This moving appeal of the poverty-stricken inventor for more money caused a few public-spirited citizens of Philadelphia to give him a little money, with which his crude steam-boat was altered and August 22, 1787 was fixed for the trial of the great experiment.

The Convention adjourned to witness the result. To no one should it have been more interesting than to Washington, for he was a practical man and no one had taken a deeper or more intelligent interest in the development of the inland waterways of the colonies, but apparently the experiment seemed to him too illusive to justify the honor of his presence, for after the Convention had adjourned he visited Mr. Powell in the afternoon and dined that evening at Mr. Morris's farm at The Hills.

His lack of interest is shown by the absence of any reference in his diary to the event which was destined to open a new chapter in the affairs of men.

Washington's absence may be explained by his respect for a prior social engagement, but it is more probable that if he had foreseen the vast import of that experiment he would have abandoned any such engagement to witness an event that was to open a new chapter in the history of mankind. No such vision was vouchsafed to him as he sat on the porch of Mr. Morris's country home that summer evening, and, brushing the mosquitoes away, he probably gave little thought then or afterwards to Mr. Fitch's novel invention. If he could have seen as in a vision the *Mauretania*, the *Leviathan* or the *Olympic*, of which Mr. Fitch's clumsy boat was but the embryo, and could have foreseen that the intercourse between the United States and the rest of the world, which steam power would facilitate, would make the former in a little more than a century the most powerful nation in the world, he would then have realized that that experiment was as important to the

development of mankind as the Constitution upon which he and his associates were deliberating.

Nearly all the members of the Convention did attend, and, possibly with the same amazement that men of this generation witnessed the first flights of Wilbur Wright through the air, they witnessed the propulsion of a boat by steam through the waters of the Delaware. The men of the Convention could not fail to see that Fitch had successfully demonstrated the feasibility of steam navigation, but they little realized its possibilities and its immeasurable effects upon the development of mankind. None of them had then the faintest appreciation of the profound influence which the utilization of steam for land and water propulsion would have upon the Constitution which they were then developing. Little they then thought that their ingenious plan for a dual system of government, which attempted to divide into watertight compartments interstate and intrastate commerce, would be confounded and almost destroyed by a new dynamic power which would inevitably result in an economic unification of commerce. Little they thought that for 136 years thereafter the Supreme Court of the United States would give a large part of its deliberations and no little judicial casuistry to the necessary adaptation of the text of the instrument to the profound changes which the utilization of steam had caused. Only one of their number vaguely saw this development. Madison dimly foresaw the day when commerce would be an indivisible "unit" and not a divisible duality. To this idea he gave expression on the floor of the Convention, and this vision may first have occurred to him when the prow of John Fitch's boat first parted the waters of the Delaware.

Nearly all the delegates attended the experiment. As they left the State House they proceeded in a body to the banks of the Delaware, where they found the Connecticut Yankee in his shirtsleeves working at a clumsy contrivance, which must have caused them much amusement. It was a small boat with unmanned oars similar to an ancient trireme. In the center was a machine that looked like a huge kitchen kettle. Fitch busily filled his little furnace with wood and his kettle

with water, and as steam slowly escaped the time of the great experiment had arrived. Probably the Framers, as they exchanged pinches of snuff, wondered why they had suspended their more important labors to witness such an exhibition of human folly, but as John Fitch pressed a lever suddenly the blades of the oars, moved by an invisible power, moved and the boat sailed out into the stream and ran northward against the current of the river. Fitch could now say to his detractors, as Galileo: "*E pur si muove.*"

History does not tell us what effect this experiment had upon the Framers of the Constitution, but that it did make some impression, even though transitory, is shown by the following polite note of congratulation which Dr. Johnson wrote Mr. Fitch on the following day:

Dr. Johnson presents his compliments to Mr. Fitch, and assures him that the exhibition yesterday gave the gentlemen present much satisfaction. He himself, and, he doubts not, the other gentlemen, will always be happy to give him every countenance and encouragement in their power which his ingenuity and industry entitles him to.

This somewhat polite and perfunctory note suggests no great enthusiasm or real interest in the prodigious character of the achievement. Indeed, it may have seemed to Doctor Johnson, a distinguished scholar and statesman, a Doctor of Laws of Oxford and now President of Columbia College, an act of condescension on his part to write so polite a note to a mere mechanic. The day of the manual toiler had not arrived. Doctor Johnson could not then perceive, as we of a later age can now perceive, that the development of power through the utilization of the invisible forces of steam and electricity has so elevated the masses of mankind that today they occupy a position of power in the State of overshadowing importance. All this was in the lap of the Gods, and the so-called "mechanical classes" had then so little political power that, except in a few colonies, they did not enjoy even the right to vote unless they were, as few of them ever were, freeholders. Little the Framers of the Constitution could appreciate on

that 22d of August, 1787, that an epoch that had lasted for many centuries, the pastoral-agricultural age of mankind, was then forever passing and that a new epoch of mechanical power, amplified a thousandfold more than their utmost imagining, was about to begin. Of this the drowsy closing years of the Eighteenth Century took no account. A search of the local press of Philadelphia fails to disclose any reference to Fitch's great achievement. The world does not know its greatest men.

A later age should not too hastily criticize the lack of foresight which prevented the spectators of Fitch's experiment from seeing the illimitable possibilities of the invention, for in this day and generation an invention of scarcely less importance, the telephone, was exhibited in the noontide splendor of the Nineteenth Century at the Centennial Exposition in Philadelphia and was regarded, even by the most learned savants, as a toy, while the Wrights flew their aeroplane around a Dayton race track for weeks before the press deigned to chronicle the stupendous fact.

CHAPTER XIII

NEARING THE END

"But whatever may be the judgment pronounced on the competency of the architects of the Constitution, or whatever may be the destiny of the edifice prepared by them, I feel it a duty to express my profound and solemn conviction, derived from my intimate opportunity of observing and appreciating the views of the Convention, collectively and individually, that there never was an assembly of men, charged with a great and arduous trust, who were more pure in their motives, or more exclusively or anxiously devoted to the object committed to them."

—Madison.

ONE problem remained for solution. After some vacillation, and with great hesitation, they had decided in favor of a single Executive. Some favored an Executive Council, but the lesson of the two triumvirates in Rome and their own common sense convinced them that the chief executive authority must be concentrated in one man. They knew that they had just created a constitutional magistrate of great power, and the problem that now confronted the Convention was as to the method of his selection. This both confounded and exhausted the wisdom of the delegates, and the result was a futile compromise, which has never worked in practice and which, from the beginning of the Republic, has been a positive menace to the public security.

Wilson had declared in the Convention that this question was "in truth the most difficult of all on which we have had to decide," and the members debated again and again on this question of procedure. To vest in the Congress the power

to elect the President was to make the Chief Magistrate its servant. Direct election by the people was deemed impossible as it was apprehended that each State would vote for its own leading citizen and no election would result. History gave the delegates two great examples of an indirect selection of a Chief Executive, the one was the Holy Roman Empire, whose head was selected by so-called electors, and the other was the head of the Roman Catholic Church, who was selected by the College of Cardinals. Unable thus to solve the problem, the question was referred to a committee, and this committee recommended the plan, not of one electoral college, which *theoretically* might have been effective, but of as many colleges as there were States, for each State was empowered to select its own electors, who should meet by themselves and then certify their choice to the Central Government. There was thus no joint deliberation between all the electors in any one session.

The plan contained the further preposterous error of providing that the two nominees, who received the largest number of votes should be, respectively, President and Vice-President. This scheme was apparently the work of the supersubtle Gouverneur Morris, who argued that as the various electoral colleges of the several States would vote at the same time and at a great distance from each other "the great evil of cabal" was avoided and that it would put them beyond the possibility of bribery.

The Convention evidently contemplated the possibility that there would be many nominees and consequently no election, and to provide for this contingency the Constitution provided that in the event of no election the House of Representatives should elect the President. This involved a final concession to the little States, for while the House of Representatives was selected by proportionate representation it was provided that in such an election the House should vote by States, each State having only one vote, without respect to its size or importance.

This was the great failure of the Constitution. From the beginning it was, except in form, a nullity. It was altogether

alien to the democratic genius of the American people. As to the legislature, the people might have been contented for some time with the theory of a representative democracy; but in the matter of the Chief Magistrate, who would have the greatest powers of any single American, and who would make a more powerful appeal to the popular imagination than any other public official, the American people, with their democratic instincts, would never have tolerated any plan that was not in substance and in fact a direct election by the people.

Such has been the case from the beginning, and yet the obsolete machinery of the electoral college has always held out a threat to the public peace and a possible civil war.*

One regrettable and disastrous change was made by the Convention at the last moment. It had been previously provided that the President should serve for seven years and should thereafter be ineligible. Unfortunately, this was stricken out in the last days of the Convention and the present term of office of four years, with eligibility for reëlection, was substituted. The crude device of the electoral college, while always a potential menace to the public safety, has rarely in practice been injurious, but the eligibility of the President to succeed himself and his short tenure of office has had almost from the beginning a malevolent influence upon American politics. The evil has been somewhat mitigated by the wise precedent, which Washington established, which morally forbids a third term, but the strength of even this tradition has been sensibly lessened in recent times. The result is that every President, with the exception of Washington, has been powerfully influenced in the selection and development of his policies by their effect upon his prospects of succession.

If the Chief Executive were free from this obvious tempta-

*The disputed election of 1876 finally turned on the right of a postmaster in Oregon to serve as an elector, and had he been disqualified Mr. Tilden and not Mr. Hayes would have been inaugurated as President. Only the too vivid recollections of a then recent civil war prevented another conflict in the Centennial Year of the nation's history.

It is possible that the present House of Representatives may be called upon to elect the next President of the United States, and if so, an acrimonious conflict, due wholly to the cumbrous and useless machinery of the electoral college, is a possibility.



THE HALL OF THE CONSTITUTION

tion to play politics, with its injection of a powerful personal interest in the judicial exercise of his great duties, many a chapter of American history would have been written to better purpose. Moreover, the eligibility for reelection has the effect of attaching to the person of the President the whole force of executive power; and as the nation grows ever greater and its civil service multiplies it becomes increasingly difficult to defeat any President either for renomination or for reelection.

Fortunately, this evil has been mitigated by the long line of patriotic statesmen who have been chosen as Chief Magistrate, and as long as the third-term tradition has any moral influence the natural desire of a President to shape his policies to succeed himself will be limited to his first term. A longer tenure of office and the elimination of this powerful element of personal ambition would have been of incalculable benefit.

The debates proceeded on this and other questions in good temper, and almost the only question that again gave rise to passionate argument was that of slavery. The extreme Southern States declared that they would never accept the new plan "except the right to import slaves be untouched." This question was finally compromised by agreeing that the importation of slaves should end after the year 1808. It however left the slave population then existing in a state of bondage, and for this necessary compromise the nation seventy-five years later was to pay dearly by one of the most destructive civil wars in the annals of mankind.

August was now drawing to a close. The Convention had been in session for more than three months. Of its work the public knew nothing, and this notwithstanding the acute interest which the American people, not merely facing the peril of anarchy, but actually suffering from it, must have taken in the Convention. Its vital importance was not underestimated. While its builders, like all master builders, did "build better than they knew," yet it cannot be said that they underestimated the importance of their labors. As one of their number, Gouverneur Morris said: "The whole human race will be affected by the proceedings of this convention." After it

adjourned one of its greatest participants, James Wilson, of Pennsylvania, said:

"After the lapse of six thousand years since the creation of the world, America now presents the first instance of a people assembled to say deliberately and calmly and to decide leisurely and peaceably on the form of government by which they will bind themselves and their posterity."

In the absence of any authentic information, the rumour spread through the colonies that the Convention was about to reconstitute a monarchy by inviting the second son of George III, the Bishop of Osnaburg, to be King of the United States; and these rumors became so persistent as to evoke from the silent Convention a semi-official denial. There is some reason to believe that a very small minority did see in the restoration of a constitutional monarchy the only solution of the problem.

On September 8 the committee had finally considered and, after modifications, approved the draft of the Committee on Detail, and a new committee was thereupon appointed "to revise the style of and arrange the articles that had been agreed to by the House." This committee was one of exceptional strength. Its members were Dr. William Samuel Johnson, a graduate of Oxford and a friend of his great namesake, Samuel Johnson; Alexander Hamilton, Gouverneur Morris, a brilliant mind with an unusual gift for lucid expression; James Madison, a true scholar in politics, and Rufus King, an orator who, in the inflated language of the day, "was ranked among the luminaries of the present age."

The convention then adjourned to await the final revision of the draft by the Committee on Style.

On September 12 the committee reported. While it is not certain, it is believed that its work was largely that of Gouverneur Morris.*

* Morris said in a letter to Timothy Pickering, dated December 22, 1814:

Having rejected redundant and equivocal terms, I believed it to be as clear as our language would permit; excepting, nevertheless, a part of what relates to the judiciary. On that subject, conflicting opinions had been maintained with so much professional astuteness,

September 13 the printed copies of the report of the Committee on Style were ready, and three more days were spent by the Convention in carefully comparing each article and section of this final draft.

On September 15 the work of drafting the Constitution was regarded as ended, and it was adopted and ordered to be engrossed for signing.

The Convention had been in session for 81 continuous days. Probably they had consumed over 400 hours in debate. If their debates had been fully reported, they would probably have filled at least fifty volumes, and yet the net result of their labors consisted of about 4,000 words, 89 sentences, and about 140 distinct provisions. As the late Lord Bryce, speaking in this age of unbridled expression, both oral and printed, so well has said:

“The Constitution of the United States, including the amendments, may be read aloud in twenty-three minutes. It is about half as long as Saint Paul’s Epistle to the Corinthians, and one-fourth as long as the Irish Land Act of 1881. History knows few instruments which in so few words lay down equally momentous rules on a vast range of matters of the highest importance and complexity.”

Even including the nineteen amendments, the Constitution, after one hundred and thirty-six years of development, does not exceed 7,000 words.

What admirable self-restraint! Possibly single opinions of the Supreme Court could be cited which are as long as the whole document of which they are interpreting a single phrase. This does not argue that the Constitution is an obscure document, for it would be difficult to cite any political charter in the annals of mankind that is so simple and lucid in expression. There is nothing Johnsonese about its style. Every word is a word of plain speech, the ordinary meaning of which even the man in the street knows. No tautology is to

that it became necessary to select phrases, *which expressing my own notions would not alarm others*, nor shock their selflove, and to the best of my recollection, this was the only part which passed without cavil.

be found and no attempt at ornate expression. It is a model of simplicity, and as it flows through the reaches of history it will always excite the admiration of those who love clarity and not rhetorical excesses. One can say of it as Horace said of his favourite Spring:

*"O, fons Bandusiæ, splendidior vitro.
Dulce digne mero, non sine floribus."*

If it be asked why, if this be true, it has required many lengthy opinions of the Supreme Court in the 263 volumes of its Reports to interpret its meaning, the answer is that, as with the simple sayings of the great Galilean, whose words have likewise been the subject of unending commentary, the question is not one of clarity but of adaptation of the meaning to the ever-changing conditions of human life. Moreover, as with the sayings of the Master or the unequalled verse of Shakespeare, questions of construction are more due to the commentators than to the text itself.

CHAPTER XIV

THE CURTAIN FALLS

"God helps them that help themselves."

—Poor Richard.

ON September 17 the Convention met for the last time. The document was engrossed and laid before the members for signature. Of the fifty-five members who had attended, only forty-two remained. Of those, a number were unwilling to sign as individuals. While the members had not been unconscious of the magnitude of their labors, they were quite insensible of the magnitude of their achievement. Bancroft says that they were "awestruck" at the result of their labors. This is rhetorical and rhapsodical history of the old school. It is very far from the truth. Few there were, if any, of the Convention who were enthusiastic about this result. Indeed, as the document was ready for signature, it became a grave question whether the remnant had sufficient faith in their own work to subscribe their names, and if they failed to do so its adoption by the people would have been impossible. Many delegates had left in disgust and the fifty-five had shrunk to forty-two. Of the latter three refused to the last to sign. They were Edmund Randolph, George Mason and Elbridge Gerry.

It was then that Doctor Franklin rendered one of the last and greatest services of his noble and useful life. With ingratiating wit and with the impressiveness that his distinguished career inspired, he said:

"I confess that there are several parts of this Constitution which I do not at present approve, but I am not sure I shall never approve them. For having lived long I have experienced many instances of being obliged by better in-

formation or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. It is therefore that, the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others. Most men indeed as well as most sects in religion think themselves in possession of all truth, and that wherever others differ from them it is so far error. Steele, a Protestant, in a dedication tells the Pope that the only difference between our Churches in their opinions of the certainty of their doctrines is, the Church of Rome is infallible and the Church of England is never in the wrong. But though many private persons think almost as highly of their own infallibility as of that of their sect, few express it so naturally as a certain French lady, who in a dispute with her sister, said: 'I don't know how it happens, sister, but I meet with nobody but myself that is always in the right.'—*Il n'y a que moi qui a toujours raison.*

In these sentiments, sir, I agree to this Constitution, with all its faults, if they are such; because I think a general government necessary for us, and there is no form of government but what may be a blessing to the people if well administered, and I believe further, that this is likely to be well administered for a course of years, and can only end in despotism as other forms have done before it, when the people shall become so corrupted as to need despotic government, being incapable of any other. I doubt, too, whether any other convention we can obtain may be able to make a better Constitution. For when you assemble a number of men to have the advantage of their joint wisdom you inevitably assemble with those men all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected? It therefore astonishes me, sir, to find this system approaching so near to perfection as it does, and I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded, like those of the builders of Babel; and that our States are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats. Thus I consent, sir, to

this Constitution because I expect no better, and because I am not sure that it is not the best. The opinions I have had of its errors I sacrifice to the public good. I have never whispered a syllable of them abroad. Within these walls they were born and here they shall die. If every one of us in returning to our constituents were to report the objections he has had to it and endeavor to gain partisans in support of them, we might prevent its being generally received, and thereby lose all the salutary effects and great advantages resulting naturally in our favor among foreign nations as well as among ourselves from our real or apparent unanimity. Much of the strength and efficiency of any government, in procuring and securing happiness to the people, depends on opinion, on the general opinion of the goodness of the government as well as of the wisdom and integrity of its governors. I hope, therefore, that for our own sakes, as a part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommending this Constitution (if approved by Congress and confirmed by the conventions) wherever our influence may extend, and turn our future thoughts and endeavors to the means of having it well administered.

On the whole, sir, I cannot help expressing a wish that every member of the Convention who may still have objections to it, would with me, on this occasion, doubt a little of his own infallibility—and to make manifest our unanimity, put his name to this instrument."

It is said that Franklin wept.* When he had concluded this address he moved that the Constitution be signed with the following attestation:

"Done in Convention, by the unanimous consent of the *States present.*"

This was to enable the Delegates, who were not convinced as to the wisdom of the proposed Constitution and remained unmoved by Franklin's eloquent appeal, to sign in behalf of their States without accepting any personal responsibility.

This ingenious idea originated with Franklin's adroit colleague, Gouverneur Morris, who had induced Franklin to pre-

* See Appendix VI, Note 4.

pare his notable address in support of such a motion. While many of the ideas advanced by the young Pennsylvanian had proved futile, yet this adroit contrivance proved the salvation of a critical situation, for thus the Constitution was presented to the people with a seeming but non-existent unanimity. The people so little suspected the acute differences in the Convention that, colloquially, they called the meeting place "Unanimity Hall." It again reflects great credit upon the honor of the Delegates that, although all of them were the recipients of many social attentions in the city of Philadelphia during the Convention, no one ever dropped a hint as to its divided councils.

Mr. Gorham, of Massachusetts, then made a belated suggestion for the purpose of making the instrument more palatable to the people by increasing the Members of the House of Representatives. This prompted Washington to make his first speech in the Convention. After modestly explaining that "his situation [as President] had hitherto restrained him from offering his sentiments on questions depending in the House," and might still impose such silence upon him, yet he ventured to recommend the passage of the Gorham resolution by stating that the small membership of the House of Representatives, as it would be organized upon the basis of the population at that time, "had been considered by many members of the Convention an insufficient security for the rights and interests of the people." He added that such small representation "had always appeared to himself among the exceptionable parts of the plan," but he threw the great weight of his influence in favor of the motion by stating that "it would give him much satisfaction to see it adopted." The motion was carried.

A vote was then taken as to the adoption of the Constitution as enrolled, and the States, as States, unanimously voted in the affirmative.

The opposition had not, however, been placated even by Franklin's persuasive speech, nor were the dissenters willing to sit in silence and thus suggest a unanimity which in fact did not exist.

His Excellency, the Governor of Virginia, who curiously enough had made the opening speech in the Convention in sub-

mitting the Virginia Plan, then arose and, alluding to Franklin's speech, apologized for his refusal to sign the Constitution notwithstanding the "majority and venerable names that would give sanction to its wisdom and its worth." He added that his opposition within the hall of the Convention would not necessarily mean that he would oppose it "without doors." He expressed a desire to be free "to be governed by his duty." He thought that—

"the object of the Convention would be frustrated by the alternative which it presented to the people. Nine States will fail to ratify the plan, and confusion must ensue."

With this dismal prediction he reserved to himself full liberty of action.

Gouverneur Morris followed in a brief speech, stating that the present plan was the best that could be obtained and that he "should take it with all its faults." He predicted that when the plan was presented to the people "the great question will be, shall there be a National Government, or not? and this must take place, or general anarchy will be the alternative."

Mr. Williamson then suggested that instead of signing the Constitution the delegates could sign only the letter which was to transmit the document to the Congress of the Confederation. Alexander Hamilton took alarm at this suggestion and expressed his anxiety that every member should sign. He significantly added:

"A few characters of consequence, by opposing, or even refusing to sign the Constitution, might do infinite mischief, by kindling the latent sparks that lurk under an enthusiasm in favor of the Convention which may soon subside. *No man's ideas are more remote from the plan than my own are known to be*; but is it possible to deliberate between anarchy and convulsion on one side, and the chance of good to be expected from the plan on the other?"

Mr. Blount thereupon vindicated the wisdom of Gouverneur Morris's adroit expedient by stating that while he would not

have signed the Constitution as an individual he was willing to have it attested as the act of the States.

Doctor Franklin then arose and with his usual conciliatory disposition expressed his regret if Governor Randolph had regarded his (Franklin's) previous speech as a reflection on the distinguished gentleman from Virginia. He stated that in preparing his speech he did not know that any member would refuse to sign his name and, then turning to his Excellency the Governor of Virginia with the most conciliating flattery, expressed the obligation of the Convention to Mr. Randolph "for having brought forward the plan in the first instance and for the assistance he had given in its progress." He earnestly appealed to him to sign the document and thus "prevent the great mischief which the refusal of his name might produce."

Mr. Randolph was not to be so easily persuaded. To him Mr. Morris's contrivance for making a dissent appear an assent had no appeal. He solemnly added that

"in refusing to sign the Constitution I take a step which may be the most awful of my life, but it is dictated by my conscience and it is not possible for me to hesitate—much less to change."

He added that Hamilton's suggestion that the Constitution should be proposed to the people as the only alternative to anarchy

"would really produce the anarchy and civil convulsions which were apprehended from the refusal of individuals to sign it."

Mr. Gerry supported the view of his Virginia colleague by suggesting his fears that a civil war might result from the present crisis of the United States. To him the alternatives that would confront the people were "two parties, one devoted to democracy, the worst of all political evils; the other as violent in the opposite extreme." He regretted that the Constitution had not proved a better compromise. Turning to Doctor Franklin, Gerry heatedly exclaimed that he regarded

the Doctor's speech as a reflection on himself and his associates who were opposed to the Constitution.

General Pinckney then announced that he would not only sign the Constitution but would "pledge" himself to secure its ratification, and appealed to all the delegates to do the same. At once objection was made, and Franklin, wisely sensing the peril of a new crisis in the Convention and, again with conciliatory tact, suggested that it was "too soon to pledge ourselves before Congress and our constituents shall have approved the plan."

The vote was then taken, and ten of the eleven States then present voted in the affirmative, while the eleventh (South Carolina) did not vote.

Again the question of secrecy was taken into consideration, for Mr. King moved that the Journals of the Convention should be either destroyed or deposited in the custody of President Washington. The second course was adopted. President Washington, ever solicitous about any public trust, then asked whether he should show copies to the members, if applied for, and the final seal of secrecy was put on the deliberations by a resolution "that he retain the Journal and other papers, subject to the order of Congress, *if ever formed* under the Constitution."

The italicized words indicate the despairing doubt of the Convention that any possible success would follow their prolonged deliberations.

It is evident that the Convention ended in a spirit of gloom. Few, if any, of them entertained any confident belief that anything of permanent value would result from their labors. They had done their best, but they believed they had failed. The statement of Bancroft that as the Constitution was laid upon the table for the signatures of the Members that they were "awestruck" at the result of their deliberations has no warrant whatever. If any one had then told the Convention that a future Prime Minister of England, and one of the greatest statesmen of the Nineteenth Century, would regard this document as the greatest piece of constructive statecraft ever struck off by the brain and purpose of man at a given

time they would literally have rubbed their eyes in amazement. Probably, their only gratification was that, for better or for worse, their work was done and that they could now return to their respective homes.

As the members of the Convention approached the table to sign their names a gentle smile illumined Franklin's benignant countenance. Throughout his long life he had untiringly worked for a true Union of the Colonies, and at last he saw the fruition of his labors. On the chair which Washington occupied was painted a half disk of a sun. Suddenly, that little and clumsily painted emblem brought to Franklin a vision of the future. How great that vision was we do not know. It may have been of apocalyptic splendor, but he may have seen that future only "as through a glass darkly."

In that hour of despair and gloom, when the Convention even in its formal motions was expressing its lack of confidence that any effective government would be created, Franklin suddenly saw that a newer and better day was about to dawn for the American commonwealth, whose sun, then seemingly setting in the murky clouds of social disorder, was now about to rise and go forward in its majestic procession through the firmament of time. With him gloom passed away and despair vanished. He drew the attention of the members to the emblem on the back of the President's chair and observed that "painters had found it difficult to distinguish in their art a rising from a setting sun." He then prophetically added:

"I have often and often in the course of the sessions and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President without being able to tell whether it was rising or setting. But now at length I have the happiness to *know* that it is a rising and not a setting sun."

Time has verified the noble sage's prediction. The career of the new nation thus formed has hitherto been a rising and not a setting sun. He had in his sixty years of conspicuously useful citizenship—and perhaps no nation ever had a more untiring and unselfish servant—done more than any American to

develop the American Commonwealth, but like Moses, he was destined to see the promised land only from afar, for the new Government had hardly been inaugurated, when Franklin died as full of years as honors. Prophetic as was his vision, he could never have anticipated the reality of to-day, for this nation, thus deliberately formed in the light of reason and without blood or passion, is to-day, by common consent, one of the greatest and noblest republics of all time.

How seriously Washington had regarded the possibility of a failure of the Convention is evidenced by the remark, of which there is a contemporaneous record.* When the four sheets of parchment were laid upon the President's desk for signature, and when Franklin was making his more hopeful prediction as to the "rising sun," General Washington, who, until that day, had remained silent throughout the entire sessions of the Convention, now rose to the full height of his six feet two inches, and, taking in hand his pen, with which he was about to sign the instrument, grimly said:

"Should the States reject this excellent Constitution, the probability is that an opportunity will never again offer to cancel another in peace,—*the next will be drawn in blood.*"

A brief but very eloquent speech from the silent man of the Convention! Possibly these few words from the great Leader had more influence than the lengthy speeches that had preceded.

Washington in his diary thus records his impressions of the close of the Convention:

The business being thus closed, the members adjourned to the City Tavern, dined together and took a cordial leave of each other. After which I returned to my lodgings—did some business with, and received the papers from the secretary of the Convention, and retired to meditate on the momentous work which had been executed, after not less than five, for a large part of the time six, and sometimes

* Pennsylvania Journal, Nov. 14, 1787.

7 hours sitting every day, Sundays & the ten days adjournment to give a Committee opportunity & time to arrange the business for more than four months.

The play was ended. The curtain had fallen. Many of the delegates had the same cynical feeling to which the dying Beethoven gave expression:

"Plaudite, amici, mea comedia finita est."

Except for a little glimpse, that curtain was never again to rise upon that epic drama until more than a half century later.

As the new Constitution, after ratification, very quickly developed its real merits and as many profoundly interesting questions of interpretation and application speedily arose, it is amazing that, when the true motive for secrecy had ended, the actors of the drama, with few exceptions, were silent to their latest breath as to the part which each had played.

It is interesting to note that Chief Justice Marshall, in his profound and lofty judicial interpretations of the Constitution, rarely fortified his arguments with any reference to the details of the Convention; although many of those details, if known to him, would have powerfully fortified his reasoning. Thus, he might well have avoided his subtle dialectics in the case of *Marbury v. Madison* by a reference to the actual debates on the Judiciary,—if such had been available to him. It is true that Marshall was not a delegate to the Convention; but his close personal relation to many of the delegates would have given him ample information, if the delegates had been disposed to discuss the details of the Convention even with their intimate friends.

History may be searched in vain for any parallel to such self-restraint. Within a decade, men of all parties regarded their new Constitution with elation and pride,—and yet, with few exceptions, no delegate ever ventured, even in the confidences of friends, to boast of the part that he had played.

Surely these men, morally as intellectually, were great in the unusual magnanimity of silence! "There were giants in those days."

CHAPTER XV

THE RATIFICATION OF THE CONSTITUTION

"This paper has been the subject of infinite investigation, disputation, and declamation. While some have boasted it as a work from Heaven, others have given it a less righteous origin. I have many reasons to believe that it is the work of plain, honest men, and such, I think, it will appear."—Robert Morris.

DOCTOR FRANKLIN'S "rising sun" was destined to ascend the firmament through a bank of dark and murky clouds, for the Constitution could not take effect until it had been ratified by nine of the thirteen States; and in many States bitter controversies were destined to precede its adoption.

Before the Convention adjourned it resolved

"That the preceding Constitution be laid before the United States in Congress assembled, and that it is the opinion of this Convention, that it should afterwards be submitted to a convention of delegates, chosen in each State by the people thereof, under the recommendation of its legislature, for their assent and ratification; and that each convention assenting to, and ratifying the same, should give notice thereof to the United States in Congress assembled."

It also suggested to Congress the steps which, upon the ratification of the Constitution by nine States, should be followed in installing the new government. Congress was then sitting in New York. By direction of the Convention Washington sent Congress a copy of the Constitution, and of the resolutions just mentioned, and a letter prepared by the Committee of Style, in which he said for the Convention:

"We have now the honor to submit to the consideration of the United States in Congress assembled that Constitution which has appeared to us the most advisable.

The friends of our country have long seen and desired, that the power of making war, peace and treaties, that of levying money and regulating commerce, and the correspondent executive and judicial authorities should be fully and effectually vested in the general government of the Union; but the impropriety of delegating such extensive trust to one body of men is evident—hence results the necessity of a different organization. . . .

In all our deliberations on this subject we kept steadily in our view that which appears to us the greatest interest of every true American, the consolidation of our Union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each State in the Convention to be less rigid on points of inferior magnitude, than might have been otherwise expected; and thus the Constitution, which we now present, is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.

That it will meet the full and entire approbation of every State is not perhaps to be expected; but each will doubtless consider that had her interest alone been consulted the consequences might have been particularly disagreeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish."

Three members of the Convention—Madison, Gorham, and King—were members of Congress as well. They at once went post-haste to New York to explain in general terms the new system of government to the Congress to prevent any too hasty obstruction by that body. It was well that they did so, for when a full copy of the Constitution was received by Congress on the twentieth of September, it met with bitter opposition from a number of the members. The leader of this

opposition was Richard Henry Lee, of Virginia. He was ably supported by Nathan Dane, of Massachusetts, and all of the delegates from New York. Lee had been for years one of the most influential members of Congress. It was on his motion that Congress in 1776 determined to sever all political ties with England and but for illness in his family he would probably have been called upon to draft the Declaration of Independence.*

It is not surprising that the old Congress hesitated to recommend to the people the charter of a superseding government, and the real wonder is that it finally did so. Probably it only did so because of a keen consciousness of its own vanished authority. If it had decided to defend the existing government, it would have found some justification in the lukewarm advocacy of the new plan by those who had formulated it. A substantial minority of the Convention were already arrayed in opposition to the new Constitution, and its most influential proponents either "damned it with faint praise" privately or, following the wise suggestion of Doctor Franklin in his concluding speech in the Convention, were silent as to their objections while mildly advocating its ratification. The most potent argument that they could make was that it provided for its own amendment and that its defects could be hereafter remedied. It was, however, quite clear to the leaders of the Convention that if the bitter discussions of the Convention were now transferred to the hustings, in a public discussion of immediate amendments to the Constitution, nothing would be accomplished. This view was forcefully expressed by Washington in a letter to Edmund Randolph, dated January 8, 1788, in which he indicates how far the Constitution was from his wishes. He writes:

"To my judgment, it is more clear than ever that an attempt to amend the Constitution which is submitted would be provocative of more heat and greater confusion

* He should not be confused with his cousin "Light Horse Harry" Lee, the brilliant military leader, the ardent supporter of the Constitution in the Virginia convention, the eulogist of Washington as "first in war, first in peace, first in the hearts of his countrymen" and himself the father of the great chieftain of a later confederacy, Robert E. Lee.

than can well be conceived. There are some things in the new form I will readily acknowledge, which never did, and I am persuaded never will, obtain my cordial approbation, but I then did concede and now do most firmly believe that in the aggregate it is the best Constitution that can be obtained at this epoch and that this or a dissolution of the Union awaits our choice and are the only alternatives before us."

Gradually, however, he and many of his associates formed a better opinion of the Constitution as its wisdom slowly became more clear. A month after the letter just quoted to Edmund Randolph, we find Washington writing to Lafayette on February 7, 1788:

"It appears to me little short of a miracle that the delegates from so many different States (which States you know are also different from each other in their manners, circumstances and prejudices) should unite in forming a system of national government so little liable to well-founded objections. Nor am I yet such an enthusiastic, partial or indiscriminating admirer of it as not to perceive it is tinctured with some real (though not radical) defects."

As the people of the colonies studied the draft of the Constitution as published in the colonial press, two well defined movements speedily developed, one in support of it and the other in opposition. Recognizing a divided sentiment, the old Congress after some debate decided to submit the Constitution to the States for action without any recommendation. On September 28th it unanimously resolved—

"that the said report, with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a convention of delegates chosen in each State by the people thereof, in conformity to the resolves of the Convention made and provided in that case."

Possibly this is one of the few instances in human history where an existing government complacently committed suicide.

As public interest increased in the great subject the division into two parties became more marked, but now the great compromise of the Convention was to be of inestimable service, for no longer was there an alignment between the large and the small States. Their differences had been amicably ended and the present opposition was based upon the fact that the Constitution had been framed largely by the representatives of the more prosperous classes, some of whom were known to be aristocratic in tendency; upon the silences of the Constitution, some of which were dealt with by later Amendments; upon the extent to which power had been granted to the Federal Government, for while it was generally agreed that its power, especially over commerce, should be increased, the increase appeared to many persons to be too great; and there was the further fact that some political leaders ranged upon one side or the other as they thought that their own political interests dictated.

The enforced secrecy of the Convention, which had made possible a final agreement, now became a strong argument for the opponents of ratification. With some justification, they could complain of this "steam roller" method. Luther Martin in his fight in Maryland especially used this weapon and ignored the understanding by telling some of the secrets of the Convention.

During the four months in which the Convention sat, popular imagination had not been inactive. Wild rumors had been in circulation; but outside the convention hall nothing had been known definitely concerning the great work within its walls.

On the one hand, General Knox wrote that—

"The new Constitution is received with great joy by all the commercial part of the community."

On the other hand, Rufus King wrote that the antagonism of many persons to the Constitution was due to—

"an opinion that is immovable, that some injury is plotted against them—that the system is the production of the

rich and ambitious, that they discover its operations and that the consequences will be the establishment of two orders in the society, one comprehending the opulent and great, the other the poor and illiterate. The extraordinary union in favor of the Constitution in this State of the wealthy and sensible part of it is in confirmation of these opinions, and every exertion hitherto made to eradicate it, has been in vain."

And again he wrote to Madison:

"An apprehension that the liberties of the people are in danger, and a distrust of men of property or education have a more powerful effect upon the minds of our opponents than any specific objections against the Constitution."

It may not be gratifying to the conventions of this more democratic age, but it is none the less a fact that only a small portion of the people ever voted in the elections of representatives to the ratifying conventions. It is estimated that not more than 160,000 thus voted, and this was only one-twentieth of the entire population. It was, however, a substantial part of the qualified electorate, for at that time universal suffrage was nonexistent. Nearly all the colonies restricted suffrage to freeholders. A few of the colonies had enlarged the electorate by the partial enfranchisement of men in mechanical trades, who though not freeholders contributed to the common wealth by the labors of their hands. This was, however, the exception, for the general rule was that of the mother country at that time that political power should be restricted to those who owned their own homes. The wisdom of such restriction was one of the subjects that was most ably and vigorously debated in the Convention, for most of its members believed that popular government would not be workable if the rule of suffrage were too broad. As to the extension of suffrage to women, the framers of the Constitution never had any conception of it as a possibility.

This may seem to the present generation as inconceivably narrow, but it was fortunate that such was the case at the

time the Constitution was submitted to the people. In many States the division of opinion was a very close one—even among the freeholders—and had universal suffrage then prevailed, as it prevails today, it is altogether probable that the Constitution would have been rejected by a largely preponderating majority. The scheme was so novel and so thoroughly subversive of their existing ideas and traditions that it would have been easy for the opponents of the Constitution, like Samuel Adams, George Mason, and Patrick Henry, to play upon the passions of the people and thus insure its rejection. As has been stated, the electoral controversy, as it developed, did not turn so much upon the interests of the large and the small States as upon those class divisions to which Madison had referred, in a passage already quoted.* The Constitution had been framed by men of substantial property interests, and one great purpose had been to protect and secure those interests; and if ratification proved doubtful when an issue thus formed was submitted almost exclusively to electors who owned their own homes, it may well be imagined that such ratification would have wholly failed if those who had no substantial interests in the maintenance of property rights had been given any voice in the decision. If it be repellant to this democratic age that the Constitution should have had its origin and support in the property classes, let it not be forgotten that in its practical operation for over a century it has been the shield of the poor as well as the defense of the men of property. The distinction between personal and property rights is invidious. Property has no rights, but persons have a right to property, and in the last analysis the right to property is the right to work and enjoy its fruits.

The conventions of the small States of Delaware, New Jersey, and Georgia ratified the Constitution promptly and without any division of opinion. Delaware accepted the Constitution on December 7, New Jersey on December 18, and Georgia on January 2. Seven days later, after a session of only five days, the convention in Connecticut ratified by a vote of 128 to 40.

* Page 56.

In none of these four States did the Convention propose any amendments to the Constitution. Their delegations in the Philadelphia Convention had been unanimously in favor of a new system of government after the compromises between the large and small States had been reached. Their concurrence was natural, as they would greatly profit by the power of the new government to regulate interstate and foreign commerce, for they had no important ports of entry and were suffering from the navigation laws of adjoining States. New Jersey, placed between Philadelphia and New York, had been likened to a cask tapped at both ends; Connecticut had been engaged in legislative warfare with New York arising out of the commercial regulations of its more powerful neighbor; and Delaware had less to fear from Congress than from the Pennsylvania Assembly. Thus the commerce clause of the new Constitution reconciled these States to the new compact.

Weakened by the bitter warfare within its own borders during the closing years of the Revolution, menaced by the powerful tribe of Creek Indians on the west and with the hostile Spaniards on the south, Georgia gladly welcomed the potential protection of a more powerful union.

The real struggle for ratification began in Pennsylvania. It was the second largest commonwealth in the colonies, and its importance was greatly enhanced by its intermediate geographical position between the northern and the southern States, with each of whom it had some ties of sympathy. Its leading city had been the political capital of the Confederation. There the Constitution had been formulated, and there was to come the first reaction from the people.

If Pennsylvania refused to ratify the Constitution, then its cause was hopeless. This was recognized throughout the colonies and the proponents of the Constitution looked with anxious eyes upon the progress of events in that State. While the Convention was concluding its labors in the lower room of the State House, the Assembly of Pennsylvania was in session in the room immediately above it.* On the morning following the close of the Convention and the

* See Appendix VI, Note 1.

dinner at the City Tavern, Franklin, as the president of Pennsylvania, and his seven associates in the delegation from that State, appeared before the Assembly and, for the first time, that body learned the nature of the new Constitution. Almost simultaneously a post rider with a copy of the new Constitution in his pouch had started at full speed to New York to submit it to the Congress of the old Confederation.

The members of the Assembly received the Constitution in silence, but in a few days it developed that there was a very divided sentiment as to whether Pennsylvania would even call a convention to ratify the Constitution.

The Assembly was to adjourn *sine die* on September 29th, and if a convention was to be called the Assembly must act upon it before that date. Without awaiting any recommendation from Congress to the several States, a motion was made in the Pennsylvania Assembly on September 28th to issue the call, and, to gain time, the opponents of the Constitution contended that it was a gross disrespect to Congress to call a ratifying convention until the existing government through its only appropriate organ had submitted the Constitution to the several States. The proponents of the Constitution in the Assembly insisted upon a vote, and thereupon its opponents, in order to prevent any action, absented themselves on the following day and thus destroyed a quorum.

The next morning a messenger arrived post haste from New York with an authentic copy of the resolution by which the Congress had submitted the Constitution to the States. When the absenting members of the Assembly were advised of it, they continued their dilatory tactics by refusing to attend the session. Fortunately, for the cause of the Constitution and the future of the country, the sentiment in Philadelphia was strongly for the Constitution. This was natural, for Philadelphia was the first commercial city of the Union, and the full weight of its manufacturing, financial and other commercial organizations was thrown in favor of the new government. The unfair methods of one faction resulted in equally unfair methods on the part of the other. The excitement grew as word was passed from house to house, from tavern to tavern,

and from coffee room to coffee room, that the new Constitution would be defeated unless the Pennsylvania Assembly called a State convention, and soon the popular excitement became so feverish that an angry mob broke into the homes of some of the recalcitrant members and dragged them, with torn clothing and faces red with indignation, to the State House, where they were literally thrust into the body of the Assembly. They protested against the brutality of the mob, but were reminded that their attendance was obligatory under a fine of five shillings. McCalmont, one of the malcontents, thereupon offered the Speaker the five shillings and attempted to make for the door. The Speaker not only refused to take the money, but promptly locked the door.

A quorum thus insured by violence, the Assembly adopted a resolution which fixed the first Tuesday of the following November as an election day upon which the people should select delegates to the State convention to consider the Constitution.*

If the sentiment in Philadelphia was strongly for the Constitution, that of the inland counties was as vigorously in opposition. The small townsmen, and, in general, the farmers as far as the Alleghenies, were generally opposed to the Constitution, which they regarded as an attempt to submerge by a strong and tyrannical government their liberties as individuals. The campaign which preceded the election of November 1st became a bitter one. Even those who supported the Constitution were not altogether pleased by the representatives of Pennsylvania in the Convention. Of these, only one, James Wilson, was nominated by the party of the Constitution. Even Franklin, the chief executive of the State, failed of nomination,

* Nearly 100 years later there was a curious aftermath to this scene in the Pennsylvania Assembly. For many years it had been the rule of the House of Representatives that a Member, who was physically present but who did not respond to the call of his name, or vote, was not present for the purpose of a quorum. The minority party was then indulging in the same political tactics that their predecessors had done in the Pennsylvania Assembly. Speaker Reed was in the Chair. His attention had been called to the precedent set for him by the Speaker of the Pennsylvania Assembly a century before, and to the consternation and wrath of the minority he proceeded to count as legally present all who, though physically present, refused to respond to the roll call.

and thereupon the opposition tried the petty game of nominating him, although an avowed supporter of the Constitution, on the opposition ticket.

The Federalists were victorious. Throughout the State two-thirds of their candidates were successful, and in Philadelphia they carried everything before them. So strong was the feeling in Philadelphia that on election night a mob gathered around the residences of the Anti-Federalist members of the Assembly, broke open the door, hurled stones through the windows and reviled the Assemblymen by name.

Of the proceedings in the State convention no adequate account can be given. Thomas Lloyd, a thoroughly competent shorthand reporter, undertook to make complete notes of the convention and publish them in book form, but all that he finally published was a thin volume which contained merely speeches by Wilson and McKean, the Federalist leaders. The "Herald" published long and full reports, the work of Alexander J. Dallas, but those reports had covered only the first half of the Convention when they stopped abruptly, and the newspaper ceased publication a month later.

Historians of the adoption of the Constitution declare that the Federalist leaders were responsible for the abandonment of Lloyd's plan of reporting the convention and that the friends of the Constitution "withdrew their subscriptions from every paper that supported the Anti-federal cause."

The Federalist leaders of the convention were James Wilson and Thomas McKean. Wilson had signed the Declaration of Independence and shared with Madison the distinction of being the foremost advocate of the Constitution in the Convention. He was afterwards a Justice of the United States Supreme Court. McKean had signed the Declaration of Independence and the Articles of Confederation on behalf of Delaware, representing that State in Congress for over eight years, although during a portion of this time he was President of Delaware and also Chief Justice of Pennsylvania. After a service of twenty-two years in the Supreme Court of Pennsylvania he was thrice elected governor of that State. Their leading opponents were William Findley, who was afterwards

a member of Congress for eleven terms, Robert Whitehill, who "from 1774 to the time of his death filled about every position in the gift of the people," and John Smilie, who served many terms in the State legislature and in Congress.

The Constitution was discussed article by article, although Wilson declared that this procedure reminded him of an incident

"which occurred when it was the practice in churches to detail a single line of Sternhold and Hopkins's psalms, and then set the verse to music. A sailor entered the church, when the clerk gave out the following line:

'The Lord will come, and he will not.'

The sailor stared; but when he heard the next line,

'Hold peace, but speak aloud,'

he instantly left the congregation, convinced that it was an assembly of lunatics."

As the convention was drawing to a close the opponents of the Constitution offered as a compromise fifteen amendments which, they declared, would make the new Constitution acceptable to them. With one exception the amendments would have been harmless and in many respects desirable additions to the Constitution. A number of them subsequently became parts of the first ten Amendments. The State convention, however, wisely rejected them, as their adoption would have delayed the ratification of the Constitution. On December fifteenth the work of the framers was ratified by a vote of forty-six to twenty-three.

In Massachusetts the friends of the Constitution were more considerate of their opponents. When the Convention opened on January 9th a majority of the members were undoubtedly against ratification. If a vote had been taken at that time the Constitution would have been rejected. The Federalists, however, soon won the influential John Hancock by promises of political support. That much overrated patriot (who as Treasurer of Harvard College mismanaged its financial affairs and

for many years refused any accounting),* and who had been elected Governor of Massachusetts by supporters of Shays' rebellion, excused his absence from the Convention by an alleged attack of gout, until he had been shown that if Virginia failed to ratify the Constitution he might become the head of the government, and that, even if that plan failed, he could have Federalist support for the governorship, if he supported the Constitution. His gout then disappeared and he assumed his place as presiding officer of the Convention.

But even Hancock's support would have been insufficient if the Federalists had not also agreed with their opponents that amendments to the Constitution were desirable and joined with them in proposing them. On this basis Massachusetts finally ratified the Constitution on February 7th, after a debate lasting nearly a month, 187 votes being cast in favor of ratification and 168 votes against it. A very close call! If ten men had voted differently Massachusetts would have rejected the Constitution, and its rejection as one of the three great States might have been fatal.

When the New Hampshire convention met on February 13, 1788, a majority of the delegates had received positive instructions to vote against the acceptance of the Constitution. Some of these members were led by the discussions to change their opinions and now favored it, but they "still felt bound by their instructions and frankly said that if a final vote was to be taken before they had an opportunity to consult their constituents their votes would be adverse to ratification." The Federalists secured an adjournment until June in order to allow the instructed delegates to consult their constituents.

* "The early part of his (President Willard's) administration was greatly troubled by the efforts to bring John Hancock, who had been treasurer from 1773 to 1777, to an accounting. Apparently he had taken the office largely from vanity and had given it so little attention that no one knew where the college stood financially. He had carried the books and papers with him to Philadelphia, and subjected them to great damage from careless keeping. During his lifetime he resisted all efforts of the college for a settlement; and it was only after his death in 1793 that the new treasurer was able to recover from his estate what he owed the college, and then with the loss of compound interest. This was in spite of the fact that Hancock was a rich man and left a large property." (Gardiner, "Harvard," 26; see also Pier, "Story of Harvard," 89-94.)

When the convention reassembled, the debate lasted only four days and on June 21st the Constitution was accepted by a vote of 57 to 47. Four members were not recorded as voting. The historian of the convention says:

“There is a pretty well authenticated tradition that a certain prominent Federalist of Concord gave a dinner party on the last day of the session at which several members reckoned as opposed to ratification were present and discussing the dinner when the final vote was taken.”

A change of six votes would have meant rejection.

Maryland and South Carolina had ratified the Constitution in the meanwhile, so that eight States had now signified their acceptance of the Constitution.

When the Maryland legislature met in November, 1787, it received careful reports from two of the delegates to the Philadelphia Convention—James McHenry, who had signed the Constitution, and Luther Martin, who had participated vigorously in some of the work of the Convention, but who had left Philadelphia before the Constitution was completed and now opposed it bitterly. Martin's report published, with additions, early in the following year as “The Genuine Information Delivered to the Legislature of the State of Maryland,” constitutes the ablest and most complete report of the work of the Convention which was prepared by any of the opponents of ratification. It covers many features of the Constitution, but is especially valuable in its references to the valiant struggle which Martin, Bedford, of Delaware, and other representatives of the smaller States waged to prevent the adoption of the Virginia Plan, as a result of which the most important compromise of the Philadelphia Convention was reached, and a Constitution drafted, which could be ratified.

The legislature ordered the holding of a convention at Annapolis on the 21st of April. When the convention assembled it was overwhelmingly Federalist, and despite the bitter opposition of Luther Martin, then the Attorney General of the State, and his bosom friend, Samuel Chase, a signer of the Declaration of Independence and a most vigorous Revolu-

tionary leader, the Constitution was ratified five days later by a vote of sixty-three to eleven.

In South Carolina the legislature debated for several days before calling a convention, three of the framers of the Constitution—John Rutledge* and the two Pinckneys—speaking in favor of ratification and Rawlins Lowndes leading the opposition. An effort was made to postpone the meeting of the State convention until other southern States, particularly Virginia, had voted. This effort was defeated by a majority of only one vote.

However, the friends of the new form of government were overwhelmingly successful in the elections, and when the convention assembled in May it ratified the Constitution by a majority of sixty-seven votes after a session which lasted only eleven days.

Virginia and New York, however, had not yet voted, and without the co-operation of those two States the success of the new government would have been problematical. In both States the opposition to the new Constitution was vigorous; in both the discussion was exhaustive and heated; in both victory was won by the exercise of the most skillful and strenuous political strategy.

In Virginia the debate was in the convention itself, with the supporters of the Constitution led by James Madison, John Marshall, and Edmund Randolph. Marshall, at that time only 33 years of age, actively supported the Constitution, of which he was soon to become the great interpreter. Randolph, the popular governor of the State, had refused to sign the Constitution as a member of the Philadelphia

* After the first Continental Congress Patrick Henry was asked whom he thought the greatest man in Congress. He replied: "If you speak of eloquence, Mr. Rutledge of South Carolina is by far the greatest orator; but if you speak of solid information, and sound judgment, Colonel Washington is, unquestionably, the greatest man on that floor."

During the most trying days of the war Rutledge, by authority from the legislature, was substantially dictator of his State. Upon the organization of the Supreme Court he was appointed senior associate justice. He resigned to accept a judicial position in his own State, but was subsequently appointed the second Chief Justice of the United States. This appointment was not confirmed because, like Otis, "after long, ardent and important public service" he was "deprived of the sunlight of reason and descended to the grave amid the shades of mental alienation."

Convention, and on his return to Virginia openly opposed its ratification, but upon the opening of the Richmond convention he came out as an earnest advocate of its adoption to the surprise of the members. His conversion was due to the influence of Washington, who subsequently made him the first Attorney General of the United States.

The opposition was led by George Mason and Patrick Henry. Mason had long taken an active part in the government of Virginia. In 1776 he drew up the State constitution with its famous bill of rights. Both before and after the Philadelphia Convention he served in the Virginia House of Delegates. At the Philadelphia Convention he took an active part in all of the proceedings and was unquestionably one of its most useful members,* although he finally refused to sign the Constitution because, in spite of his arguments, the Convention declined to add a Bill of Rights to the Constitution. Within three years ten Amendments were adopted in order to incorporate into the supreme law of the land such provisions as Mason had advocated. Of all the opponents of the Constitution either in Virginia or in any other State he was, beyond doubt, the ablest constructive statesman.

He also objected to the enforcement of treaties by the Federal courts, saying that he and other Virginians, who had acquired land formerly the property of Lord Fairfax, would suffer if the treaty with England were strictly enforced. But regardless of this—and Mason was no more influenced by personal considerations than were many other members of the Convention—his chief ground of dissatisfaction was the omission of a Bill of Rights from the Constitution. Mason had especially close relations with Richard Henry Lee, who became the most active organizer of Anti-Federalism throughout the country, and it was probably through Mason that Lee received his first impressions of the Constitution.

Patrick Henry was the most eloquent orator of his generation in America. He was indeed the "forest born Demosthenes." Oratory must have been an inheritance, for his cousin was Lord

*Madison once declared that Mason possessed the greatest talents for debate of any man he had ever heard speak. Gilman, "James Monroe," 2.

Brougham, the greatest advocate of the English bar in the next generation. Henry was the leader of the Virginia bar, rising to that position by unaided efforts, although he subsequently presented in court only those cases which had been prepared by associates. John Marshall served as his assistant in a number of instances. For five terms Henry was governor of his State; and in later years Washington vainly offered him, in turn, the positions of Secretary of State and Chief Justice of the United States. Before the Philadelphia Convention he had long been in favor of a strong central government, and his relations with Washington were those of cordial friendship. He was chosen a delegate to the Philadelphia Convention, but refused to attend it because of his indignation at the aid which the Northern States were giving to Jay in the negotiation of a treaty with Spain which denied to the settlers beyond the Allegheny Mountains the use of the Mississippi River for a generation.*

* Washington, with his usual sagacity, perceived the great desirability of Patrick Henry's approval of the work of the Convention and the great peril to its adoption which would attend his opposition. As soon as Washington returned to Mount Vernon, on September 24th, he sent a copy of the Constitution to Henry, saying,

"Your own judgment will at once discover the good and the exceptionable parts of it; and your experience of the difficulties, which have ever arisen when attempts have been made to reconcile such a variety of interests and local prejudices, as pervade the several States, will render explanation unnecessary. I wish the Constitution, which is offered, had been more perfect; but I sincerely believe it is the best that could be obtained at this time. And, as a constitutional door is opened for amendments hereafter, the adoption of it, under the present circumstances of the Union, is in my opinion desirable.

From a variety of concurring accounts it appears to me, that the political concerns of this country are in a manner suspended by a thread, and that the Convention has been looked up to, by the reflecting part of the community, with a solicitude which is hardly to be conceived; and, if nothing had been agreed on by that body, anarchy would have ensued, the seeds being deeply sown in every soil."

To this letter Henry replied,

"I have to lament that I cannot bring my mind to accord with the proposed Constitution. The concern I feel on this account is greater than I am able to express. Perhaps mature reflection may furnish me with reasons to change my present sentiments into a conformity with the opinions of those personages for whom I have the highest reverence."

Henry virtually directed the decisions of the Virginia legislature. While he was opposed to the adoption of the Constitution, he declared that the question must be submitted to a State convention.

Henry fought against ratification to the last ditch, but when the Richmond Convention finally gave the consent of the State by a vote of 89 to 79, then, although "at least ten members voted either in disobedience of positive instructions of their constituents, or in defiance of their well known opinions," Henry refused to join the malcontents who proposed to resist the new government, saying that he had fought in the "proper place" and must now submit.

Historians of the Convention describe one of Henry's most impressive speeches in the Virginia convention:

"After having delineated with overpowering vividness the calamities which were likely to befall mankind from their adoption of the proposed frame of government, the orator, it is said, as if wielding an enchanter's wand, suddenly enlarged the arena of the debate and the number of his auditors; for, peering beyond the veil which shuts in mortal sight, and pointing 'to those celestial beings who were hovering over the scene,' he addressed to them an invocation that made every nerve shudder with supernatural horror, when, lo! a storm at that instant rose, which shook the whole building, and the spirits whom he had called seemed to come at his bidding. Nor did the eloquence, or the storm, immediately cease; but availing himself of the incident, with a master's art, he seemed to mix in the fight of his ethereal auxiliaries; and, 'rising on the wings of the tempest, to seize the artillery of heaven, and direct its fiercest thunders against the heads of his adversaries.' The scene became insupportable; and the House rose without the formality of adjournment, the members rushing from their seats with precipitation and confusion."*

Extensive amendments to the Constitution were proposed by the Virginia convention in order to meet the claim of its opponents that individual rights were not sufficiently protected. The leaders of the convention were conciliatory and, as Washington afterwards wrote to Pinckney, only "conciliatory conduct" had secured ratification of the Constitution. Had

* Tyler, "Patrick Henry," 337-338.

the tactics of the Federalist leaders of Pennsylvania been followed in Massachusetts, Virginia and New York, none of those States would have ratified. Had Massachusetts rejected the Constitution, Virginia would have probably followed in its footsteps, and unless both of those States had concurred New York would not have joined the Union. It is however also probable that if Pennsylvania had not promptly ratified the Constitution and set the example Massachusetts, Virginia and New York would have rejected it.

In the following November, when the Virginia Assembly came to the election of two United States Senators, Henry arose and said, in a very few words, that Richard Henry Lee, who had been more active than any other person in arousing opposition to the proposed Constitution throughout the United States, and William Grayson, who had been one of the most vigorous opponents of ratification in the Virginia convention, should be elected, and that James Madison should not be elected. Lee and Grayson were thereupon chosen Senators. The Assembly then went further and so districted the State as to make it difficult for Madison to secure a seat in the House of Representatives.* Madison nevertheless won that election, defeating James Monroe.†

At the first session of the First Congress, Madison introduced the first ten Amendments to the Constitution and, against much opposition, induced the House to decide in favor of their

*In January, 1789, Washington's private secretary wrote to the Governor of New Hampshire concerning Henry, as follows:

"He led on his almost unresisted phalanx, and planted the standard of hostility upon the very battlements of federalism. In plain English, he ruled a majority of the Assembly; and his edicts were registered by that body with less opposition than those of the Grand Monarque have met with from his parliaments. He chose the two senators. . . . He divided the State into districts, . . . taking care to arrange matters so as to have the county, of which Mr. Madison is an inhabitant, thrown into a district of which a majority were supposed to be unfriendly to the government, and by that means exclude him from the representative body in Congress. He wrote the answer to Governor Clinton's letter, and likewise the circular letter to the executives of the several States. . . . And after he had settled everything relative to the government wholly, I suppose, to his satisfaction, he mounted his horse and rode home, leaving the little business of the State to be done by anybody who chose to give themselves the trouble of attending to it." (Tyler, "Patrick Henry," 353.)

†Upon the death of Grayson, shortly after his election to the Senate, Monroe and not Madison was elected his successor.

submission to the States for ratification. He recognized that powerful forces throughout the country were insisting that Congress should go further and call a second convention to revise the Constitution, and he thus sought to avert the great danger to the Constitution and to his own political future if Congress trifled with the popular demand for amendments.

New York was at the outset overwhelmingly opposed to the new Constitution. It had named five delegates to the Annapolis convention, but only Hamilton and one associate had attended. In January, 1787, it had denied the request of Congress for the grant of an impost which would constitute a permanent source of revenue to the Confederation. While Hamilton persuaded the State to send three delegates to the Philadelphia Convention, Hamilton alone was friendly to a strong central government and his associates, Yates and Lansing, had not only opposed the Virginia plan, but had seceded from the Convention. The leaders of the State were opposed to any plan to strengthen the Confederation or to replace it with a more powerful government. Thus New York was of the ultra-little States party and its leaders were the worst "irreconcilables."

When the Philadelphia Convention had completed its work, even Hamilton spoke contemptuously of the Constitution as a "shilly shally" thing and a "wretched makeshift," but he was magnanimous enough to sign it on behalf of New York on the theory that it was the only possible remedy for the evil times.

How his conversion—like that of Paul on the way to Damascus—occurred, is unknown to history. Possibly it was due to Washington's influence, but of this there is no evidence in their correspondence. More probably his disgust with the "dog-in-the-manger" tactics of his colleagues influenced him. Their opposition to any government worthy of the name induced Hamilton to advocate a Constitution which he had regarded so contemptuously.

Sixteen years later, Hamilton gave his own explanation of his change of heart in a letter to Timothy Pickering, dated September 16, 1803, in which he thus explained the reasons for his advocacy of a Constitution, which he had condemned:

"1. That the political principles of the people of this country would endure nothing but republican government. 2. That, in the actual situation of the country, it was in itself right and proper that the republican theory should have a fair and full trial. 3. That to such a trial it was essential that the Government should be so constructed as to give all the energy and stability reconcilable with the principles of that theory.

These were the genuine sentiments of my heart, and upon them, I acted. I sincerely hope, that it may not hereafter be discovered, that through want of sufficient attention to the last idea, the experiment of Republican Government, even in this country, has not been as complete, as satisfactory and as decisive as could be wished."

There is another psychological explanation for Hamilton's growing enthusiasm for the document which he had characterized so contemptuously. He was a great advocate, and, when a man of this temperament attempts to support a thesis by a brief, he is apt to become enamoured of his subject, which grows upon him until it obsesses him. Such was the experience of Hamilton. Starting with little respect for the Constitution, to which he had contributed little or nothing, but which he regarded as the only possible alternative either to anarchy or to a reunion with England, he became its foremost interpreter by writing the greater part of *The Federalist* papers, and, as the controversy warmed in New York, his powers of advocacy rose higher and higher, and, in seeking to convince others as to the great merits of the new system of government, he convinced himself. No one can read his contributions to *The Federalist* essays without being impressed with their sincerity, and such sincerity indubitably shows that Hamilton, as he studied the great document, became more and more impressed with its wisdom, and that he finally concluded his great labors in its defense by becoming its foremost advocate in the struggle for ratification, and, with the exception of Marshall, its foremost interpreter at any time.

In rendering this great service, he immortalized himself, and so won the admiration of the world that Talleyrand ranked

him with William Pitt and Charles James Fox, as the three greatest intellects of the time.

The irony of history is further shown by the fact that his predictions as to the failure of the new system of government were largely confounded by his own administrative genius, which made the Constitution a workable instrument of government.

His service in procuring the ratification of New York was inestimable.

Both in wealth and in population New York was then inferior to Virginia, Pennsylvania, and Massachusetts, but its position was strategic, for it separated New England from the other States, and especially in view of its wonderful harbor the action of New York was necessary, if there were to be any effective regulation of commerce or any adequate taxation of imports.

The opposition to the Constitution was led by the powerful political machine of Governor Clinton, and by a well conceived system of propaganda the new Constitution was attacked most vigorously. In reply Hamilton, aided by Jay and Madison, published a remarkable series of eighty-five essays, which appeared several times each week from October, 1787, down to the meeting of the convention in June, 1788. These essays, then printed in various New York newspapers over the signature of "Publius," are now known as *The Federalist*. They have been justly praised as the best commentary upon the Constitution. Jay would have taken a more active part in the work, but for a number of weeks he suffered from an injury received while attempting to restore order when a mob attacked some doctors who were accused of rifling graves in the yard of Trinity Church.

The election of delegates to a State convention was held late in April, and of the 57 delegates chosen only 19 were in favor of the Constitution. The convention met at Poughkeepsie on June 17th and there discussed the Constitution section by section, Hamilton, Jay and Livingston leading the Federalists, while the opposition was led by Melancthon Smith, ably assisted by Yates and Lansing, who had been Hamilton's colleagues at Philadelphia.

Before a vote was taken word reached the convention that ten States had already ratified the Constitution. Further opposition was useless, especially as Melancthon Smith, the leading opponent of the Constitution, announced that the arguments of its friends had been convincing and that he should vote for ratification. When the vote was finally taken on July 26th three more than the necessary number of delegates had voted in favor of ratification.

This vote had been preceded by a resolution, accepted reluctantly by the Federalists, in which the calling of another convention to consider amendments had been recommended. Washington afterwards wrote to Jay that he did not see how acquiescence in this plan could have been avoided.

After Washington's inauguration North Carolina and Rhode Island ratified the Constitution, North Carolina accepting it in November, 1789, and Rhode Island—fearing reprisals if it longer remained aloof—in May, 1790, at a convention in Newport. In Rhode Island it was ratified by the narrow majority of two votes.

Thus again was completed the union of the thirteen States, this time in fact, as in name, "a more perfect union."

Upon what a slender thread had hung the destinies of the United States! The vote of eighteen men would have certainly defeated the ratification of the Constitution. If ten Massachusetts delegates, six delegates of Virginia and two of New York had changed their votes, the noble work of the Philadelphia Convention would have come to nought. The United States would not, at least at that time, have come into existence, and its present Constitution, the admiration of the world, would have become waste paper, if, by a change of only eighteen votes the great States of Massachusetts, Virginia and New York had absented themselves from the "more perfect union."

If the Constitution, which had thus been saved to the American people by so narrow a margin and which had, among the masses, so little support, proved successful, it was largely due to three causes:

The first was the speedy restoration of prosperity. As soon

as the period of uncertainty was ended and a stable Government was assured, the American people, with their accustomed resiliency, at once went to work, and the long period of commercial prostration was speedily succeeded by one of great prosperity.

A people are apt to be favorable to political institutions in days of prosperity. That the Constitution has outlived other written forms of Government and is, even today, the most stable, is due to the fact that, with some temporary fluctuations, the history of America has been one of ever-increasing prosperity. Gifted by incomparable resources and with a virile people, the wealth of America has increased by leaps and bounds, until today it is incomparably the richest nation in the world. This is naturally calculated to justify in the minds of the people a confidence in their form of government; but it is well for Americans, who sometimes superciliously contrast the strength of their own institutions with the weakness of those of other governments—especially in the present day of general wreckage—to remember that, if the portion of America had been continued adversity, the fate of the Constitution might have been altogether different.

The second reason was the incomparable moral authority of Washington,—to which there are few parallels in the history of the world. Few modern nations can be said, in any true sense, to have had a Founder. It is the immortal fame of Washington that he played such a rôle. Had he retired to his well-earned rest at Mount Vernon and declined the unanimous election as the first President of the Republic, it is not unlikely that the Constitution would have failed for lack of popular support from the beginning. The confidence, which men of all classes felt in one who was well esteemed by them as the Father of his Country, reconciled them to a form of government which, as previously stated, had been created only by a minority.

The third cause was the masterly administrative genius of Alexander Hamilton. With his theories of government, the American people had scant sympathy; but the masterly skill with which he, as the chief administrative officer of Wash-

ington, put the wheels of the new machinery into motion, and the remarkable manner in which—to paraphrase Webster's metaphor—he struck the hard rock of financial exhaustion and caused streams of revenue to gush forth, go far to justify the extraordinary tribute of Talleyrand, who, whatever his other faults may have been, was surely no mean judge of men.

CHAPTER XVI

THE POLITICAL PHILOSOPHY OF THE CONSTITUTION

"The Government of the United States has been emphatically termed a government of laws, and not of men."

—John Marshall.

THE fundamental nature of that "more perfect union" should now be briefly considered.

As previously stated, few if any of the framers of the Constitution considered it perfect in every respect. They subordinated individual opinions to the collective judgment of the Convention and modestly regarded the result of their labors as simply the best Constitution which could then be secured. Nor did they expect their system of government to remain unchanged through the ages.

Recent events had shown them that political institutions cannot be wholly static. While the Articles of Confederation had provided that they "shall be inviolably observed by every state and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration shall be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every state" (Article XI), less than ten years after those Articles had been offered to the States for ratification the need for amending them had become apparent, the Annapolis Convention had met, and then in turn the Philadelphia Convention had assembled, and agreed that mere amendments to the Articles would be insufficient.

Nor did the framers of the new Constitution propose that it be adopted in accordance with the procedure laid down by the Articles of Confederation. The Constitution was in the

first instance proposed by the Convention rather than by Congress; it was ratified by conventions rather than by the state legislatures, and it provided that "the ratification of the conventions of nine states shall be sufficient for the establishment of this Constitution between the states ratifying the same," instead of requiring the unanimous assent of the states.

The Constitution, then, was a revolutionary change in the form of government, adopted in clear contravention of the strict rules laid down for the amendment of the Articles of Confederation. The recent experience of the nation had shown unmistakably to the men of 1787 that if a government is to endure it must be possible to change the Constitution without waiting for unanimous consent.

The new Constitution expressly provided that amendments might be made. But it did far more than that. The discussions in the Constitutional Convention show clearly that the framers were anxious to make this provision effective and for that reason they took great pains to establish alternative methods of revising the Constitution. They so framed Article V as to make it impossible for either Congress or the State legislatures to prevent the submission of amendments and to make it impossible for state legislatures to obstruct absolutely any changes in the Constitution which might limit the powers of the legislatures. The power to propose amendments was given to Congress but Congress was also directed to call a convention for proposing amendments on application of the legislatures of two-thirds of the States, and it was provided that proposed amendments should "be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress."

As Madison well said:

"The mode preferred by the Convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility which would render the Constitution too mutable, and that extreme difficulty which might perpetuate its discovered faults. It, moreover,

equally enables the general and the state governments to originate the amendment of errors as they may be pointed out by the experience on one side or on the other." (The Federalist, No. 43.)

Hamilton devoted most of his effort in the last number of the Federalist to showing that the amendment of the Constitution would not be unduly difficult.

In short, the provisions of Article V, which authorized amendments, were placed there after the experience of the country had shown their need most clearly; and were carefully devised for the purpose of making possible any change in our system of government for which there was a sufficiently strong demand throughout the country.

Notwithstanding this power of amendment no system of government has undergone so little change. If the first ten Amendments be counted as virtually part of the original document, only nine amendments have been adopted in 137 years, and of these, excepting the amendments which ended slavery as the result of the Civil War, only the last three, passed in recent years partly through the relaxing influence of the world war, mark a serious departure from the basic principles of the Constitution.

This stability is the more remarkable when the profound and revolutionary change that has taken place in the social life of man since the Constitution was adopted is taken into account. It was framed at the very end of the pastoral-agricultural age of humanity. The industrial revolution, which has more profoundly affected man in the last century and a half than all the changes which had theretofore taken place in the life of man since the cave dweller, was only then beginning. Measured in terms of mechanical power, men when the Constitution was formed were Lilliputians as compared with the Brobdingnagians of our day, when man outflies the eagle, outswims the fish, and by his conquest and utilization of the invisible forces of nature has become the superman; and yet the Constitution of 1787 is, in most of its essential principles, still the Constitution of 1924. This surely marks it as a marvel in statecraft and can only be explained by the fact that the Constitution was devel-

oped by a people who, as "children brave and free of the great mother-tongue," had a real genius for self-government and its essential element, the spirit of self-restraint. They have always had sufficient political sagacity to prefer the stability of a tried system of government, even if not perfect, to the mad spirit of innovation.

While it is true that the *text* of the instrument has suffered almost as little change as the Nicene Creed, yet it would be manifest error to suggest that in its development by practical application the Constitution has not undergone great changes.

The greatest of all its expounders, Chief Justice Marshall, said, in one of his notable opinions, that the Constitution was—

"intended to endure for ages to come, and consequently to be *adapted* to the various crises of human affairs. To have prescribed the means by which government should in all future times execute its powers would have been to change entirely the character of the instrument and to give it the properties of a legal code. It would have been an unwise attempt to provide by immutable rules for exigencies which, if foreseen at all, must have been foreseen dimly, and can best be provided for as they occur."

In this great purpose of "enumerating" rather than "defining" the powers of government its framers were supremely wise. While it was marvellously sagacious in what it provided, it was wise to the point of inspiration in what it left unprovided.

Nothing is more admirable than the self-restraint of men who, venturing upon an untried experiment, and after debating for four months upon the principles of government, were content to embody their conclusions in not more than four thousand words. To this we owe the elasticity of the instrument. Its vitality is due to the fact that, by usage, judicial interpretation, and, when necessary, formal amendment, it can be thus adapted to the ever-accelerating changes of the most progressive age in history, and that a people have administered the Constitution who, in the process of such adaptation, have generally shown the same spirit of conservative self-restraint as did the men who framed it.

The Constitution is neither, on the one hand, a Gibraltar rock, which wholly resists the ceaseless washing of time or circumstance, nor is it, on the other hand, a sandy beach, which is slowly destroyed by the erosion of the waves. It is rather to be likened to a floating dock, which, while firmly attached to its moorings, and not therefore the caprice of the waves, yet rises and falls with the tide of time and circumstance.

While in its practical adaptation to this complex age the men who framed it, if they could "revisit the glimpses of the moon," would as little recognize their own handiwork as their own nation, yet they would still be able to find in successful operation the essential principles which they embodied in the document more than a century ago.

But what of its future and how long will the Constitution wholly resist the washing of time and circumstance? Lord Macaulay in a remarkable letter, to which fuller reference will be made in a subsequent chapter, in 1857 ventured the prediction that the Constitution would prove unworkable as soon as there were no longer large areas of undeveloped land and when the United States became a nation of great cities. That period of development has arrived. In 1880 only 15 per cent. of the American population lived in the cities and the remainder were still on the farms. To-day over 52 per cent. are crowded in one hundred great cities. Lord Macaulay thought that under these conditions the Constitution would prove "all sail and no anchor."

He had this justification that at the time he wrote the Supreme Court had only once or twice nullified a law of Congress as unconstitutional although it had invalidated many State statutes, which were *ultra vires*. His statement contains a false premise. As I have shown, the Constitution is not "purely democratic." It is amazing that so great a mind should have so little understood, that more than any other Constitution, that of America imposes powerful restraints on democracy. The experience of a century and a third has shown that while the anchor may at times drag, yet it measurably holds the ship of state to its ancient moorings. The American Constitution still remains in its essential principles and still

enjoys not only the confidence but the affection of the great and varied people whom it rules. To the latter this remarkable achievement must be attributed rather than to any inherent strength in parchment or red seals, for in a democracy the living soul of any Constitution must be such belief of the people in its wisdom and justice. If it should perish to-morrow, it would yet have enjoyed a life and growth of which any nation or age might be justly proud. Moreover, it could claim with truth, if it finally perished, that it had been subjected to conditions for which it was never intended and that some of its essential principles had been ignored.

The Constitution is something more than a written formula of government—it is a great spirit. It is a high and noble assertion, and, indeed, vindication, of the morality of government. It “renders unto Cæsar [the political state] the things that are Cæsar’s,” but in safeguarding the fundamental moral rights of the people, it “renders unto God the things that are God’s.”

To the succeeding ages, the Constitution will be a flaming beacon, and everywhere men, who are confronted with the acute problems of this complex age, can take encouragement from the fact that a small and weak people, when confronted with similar problems, had the strength and will to impose restraint upon themselves by peacefully proclaiming in the simple words of the noble preamble to the Constitution:

“We, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.”

Note the words “ordain and establish.” They imply perpetuity. They make no provision for the secession of any State, even if it deems itself aggrieved by federal action. And yet the right to secede was urged for many years, but Lincoln completed the work of Washington, Franklin, Madison and Hamilton by establishing that “government of the people,

by the people, for the people shall not perish from the earth."

Its success is also due to the fact that its framers were little influenced by the spirit of doctrinarianism. They were not empiricists, but very practical men. They did not cherish the illusion that any written charter of government could make democracy "fool-proof." They knew—and in that knowledge was their strength—that there is no panacea for error, and no substitute for wisdom, and that a contrary view was mere political quackery. This is the more remarkable because they worked in a period of an emotional fermentation of human thought. The long-repressed intellect of man had broken into a violent eruption like that of a seemingly extinct volcano.

From the middle of the eighteenth century until the end of the French Revolution the masses everywhere were influenced by the emotional, and at times hysterical, abstractions of the French encyclopædists; and that these had influenced thought in the American colonies is readily shown in the preamble of the Declaration of Independence, with its unqualified assertion of the equality of men and the absolute right of self-determination. The Declaration sought in its noble idealism to make the "world safe for democracy," but the Constitution attempted the greater task of making democracy safe for the world by inducing a people to impose upon themselves salutary restraints upon majority rule.

Fortunately, the framers of the Constitution had learned a rude and terrible lesson in the anarchy that had followed the War of Independence. They were not so much concerned about the rights of man as about his duties, and their great purpose was to substitute for the visionary idealism of a rampant individualism the authority of law. Of the hysteria of that time, which was about to culminate in the French Revolution, there is no trace in the Constitution. This contempt for mere "phrase making" and adherence to realities was indicated when, in the Convention, a Bill of Rights was proposed. The Declaration of Independence had declared that "all men were created equal." In a political sense, they are. The Declaration was not a scheme of government, but an eloquent

appeal to the emotions of men, in order to fortify them for an arduous struggle. The incongruity between the Declaration of Independence and the existence of negro slavery did not concern the members of the Continental Congress, any more than the literal accuracy of a party platform concerns a political convention of today.

When, however, the Constitutional Convention—composed in part of the same men who had formed the Continental Congress—considered the inclusion of a Bill of Rights, which, literally applied, would have put the slave population on the same plane as the free people of the Colonies, they refused to include it; for they were face to face with the stern reality that no constitution could be adopted which did not recognize the existence of slavery. Could they have solved this terrible problem, it would have been better for children still unborn, but they could not, as conditions then existed; and because they could not, they would not be guilty of the hypocrisy of writing resounding phrases into a Constitution, which were contradicted by the realities of their day. No political document is more sincere in its precise statement of rights and powers than the Constitution.

They were less concerned about Rousseau's social contract than to restore law and order. Hard realities and not generous and impossible abstractions interested them. They had suffered grievously for more than ten years from misrule and had a distaste for mere phrase-making, of which they had had a satiety, for the Constitution, in which there is not a wasted word, is as cold and dry a document as a problem in mathematics or a manual of parliamentary law. Its mandates have the simplicity and directness of the Ten Commandments. In this freedom from empiricism and sturdy adherence to the realities of life, it can be profitably commended to all nations which may attempt a similar task.

CHAPTER XVII

THE BASIC PRINCIPLES OF THE CONSTITUTION

"Moribus antiquis stat res Romana virisque."

WHILE the Constitution apparently only deals with the practical and essential details of government, yet underlying these simply but wonderfully phrased delegations of power is a broad and accurate political philosophy, which goes far to state the "law and the prophets" of free government.

The seven basic principles of the Constitution will be briefly stated in this and the following three chapters.

I.

The first is representative government.

Nothing is more striking in the debates of the Convention than the distrust of its members, with few exceptions, of what they called "democracy." By this term they meant the power of the people to legislate directly and without the intervention of chosen representatives. They believed that the utmost concession that could be safely made to democracy was the power to select suitable men to legislate for the common good, and nothing is more striking in the Constitution than the care with which they sought to remove the powers of legislation from the *direct* action of the people. Nowhere in the instrument is there a suggestion of the initiative or referendum. Even an amendment to the Constitution could not be directly proposed by the people in the exercise of their residual power or adopted by them. As previously said, it could only be proposed by two-thirds of the House and the Senate, or by a convention called by Congress on application of the legislatures of two-thirds of the states, and in either alternative could become effective

only if ratified by three-fourths of the States, acting, not by a popular vote, but through their chosen representatives either in their legislatures or special conventions. Thus they denied the power of a majority to alter even the form of government. Moreover, they gave to the President the power to nullify laws passed by a majority of the House and Senate by his simple veto, and yet, fearful of an unqualified power of the President in this respect, they provided that the veto itself should be vetoed, if two-thirds of the Senate and House concurred in such action. Moreover, the great limitations of the Constitution, which forbid the majority, or even the whole body of the House and Senate, to pass laws either for want of authority or because they impair fundamental rights of individuals, are as emphatic a negation of an absolute democracy as can be found in any form of government. Measured by present-day conventions of democracy, the Constitution is an undemocratic document.

The framers believed in representative government, to which they gave the name "Republicanism" as the antithesis to "democracy." The members of the Senate were to be selected by State legislatures, and the President himself was, as originally planned, to be selected by an electoral college similar to the College of Cardinals.

The debates are full of utterances which explain this attitude of mind. Mr. Gerry said: "The evils we experience flow from the excesses of democracy. The people are the dupes of pretended patriots." Mr. Randolph, the author of the Virginia Plan, observed that the general object of the Constitution was to provide a cure for the evils under which the United States labored; that in tracing these evils to their origin every man had found it in the tribulation and follies of democracy; that some check, therefore, was to be sought for against this tendency of our government.

Alexander Hamilton remarked, on June 18, that—

"the members most tenacious of republicanism were as loud as any in declaiming against the evils of democracy."

He added:

"Give all the power to the many and they will oppress the few. Give all the power to the few and they will oppress the many. Both ought, therefore, to have the power that each may defend itself against the other."

Perhaps the attitude of the members is thus best expressed by James Madison, in the 10th of the *Federalist* papers:

"A pure democracy, by which I mean a State consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. Such democracies have ever been spectacles of turbulence and contention, and have often been found incompatible with the personal security and rights of property, and have generally been as short in their lives as they have been violent in their deaths."

Undoubtedly, the framers of the Constitution in thus limiting popular rule did not take sufficient account of the genius of an English-speaking people. A few of their number recognized this. Franklin, a self-made man, believed in democracy and doubted the efficacy of the Constitution unless it was, like a pyramid, broad-based upon the will of the people. Time has shown that he was right.

Colonel Mason, of Virginia, who was also of the Jeffersonian school of political philosophy, said:

"Notwithstanding the oppression and injustice experienced among us from democracy, the genius of the people is in favor of it, and the genius of the people must be consulted."

In this they were true prophets, for the American people have refused to limit democracy as narrowly and rigidly as the framers of the Constitution clearly intended. The most notable illustration of this is the selection of the President. It was never contemplated that the people should directly select the President, but that a chosen body of electors should, with

careful deliberation, make this momentous choice. While, in form, the system persists to this day, from the very beginning the electors simply vote as the people who select them desire.

Moreover, the spirit of representative government has greatly changed since the Constitution was adopted. The ideal of the earlier time was that so nobly expressed by Edmund Burke in his address to the electors of Bristol, for the framers believed that a representative held a judicial position of the most sacred character, and that he should vote as his judgment and conscience dictated without respect to the wishes of his constituents. To-day, and notably in the last half century, the contrary belief, due largely to Jefferson's political ideals, has so influenced American politics that the representatives of the people, either in the legislature or the executive departments of the government, are considered by the masses as only the mouthpiece of the people who select them, and to ignore their wishes is regarded as virtually a betrayal of a trust and the negation of democracy.

For this change in attitude there has been much justification, for in this country, as elsewhere, the people do not always select their best men as representatives, and, with the imperfections of human nature, there has been so much of ignorance and, at times, venality, that the instinct of the people is to take the conduct of affairs into their own hands. On the other hand, this change of attitude has led, in many instances, to government by organized minorities, for, with the division of the masses into political parties, it is easy for an organized minority to hold the balance of power, and thus impress its will upon majorities. Time may yet vindicate the theory of the framers that the limit of democracy is the selection of true and tried representatives. How far we have fallen from this great ideal of a representative government will be discussed hereafter in a chapter on the decay of leadership.

2.

The second and most novel principle of the Constitution is its dual form of government.

This constituted a unique contribution to the science of politics. This was early recognized by de Tocqueville, one of the most acute students of the Constitution, who said that it was based "upon a wholly novel theory, which may be considered a great discovery in modern political science."

Previous to the Constitution it had not been thought possible to divide sovereignty, or at least to have two different sovereignties moving as planets in the same orbit. Therefore, all previous federated governments had been based upon the plan that a league could only effect its will through the constituent States and that the citizens in these States owed no direct allegiance to the league, but only to the States of which they were members. The Constitution, however, developed the idea of a dual citizenship. While the people remained citizens of their respective States in the sphere of government which was reserved to the States, yet they directly became citizens of the central government, and, as such, ceased to be citizens of the several States in the sphere of government delegated to the central power; and this allegiance was enforced by the direct action of the central government on the citizens as individuals. Thus has been developed one of the most intricately complex governmental systems in the world.

Under the Constitution, governmental power is—like ancient Gaul (according to Cæsar)—"divided into three parts." The first is the power granted to the central Government. The second, that reserved to the States, and the third and most important of all—although the fact is not generally recognized—the power reserved to the people under the many inhibitions both of State and Federal legislation.

Sixty-five powers are given to the Federal Government and seventy-nine are withheld, of which thirteen are denied both to that Government and to the constituent States. Forty-three of the sixty-five powers given to the Federal Government are expressly denied to the States; while, as to eighteen powers, the grant is concurrent.*

However, the division of powers cannot be indicated merely by counting; for some of the powers granted to the Federal

* Stimson's "American Constitution as it Protects Property Rights."

Government have, in an age of economic centralization, become so vast that the shadow of Federal authority is always extending,—not by the deliberate action of men, but by the imperative force of economic influences—and is fast eclipsing the power of the States.

At the time of the adoption of the Constitution this division of jurisdiction was quite feasible, for, geographically, the various States were widely separated, and the lack of economic contact made it easy for each government to function without serious conflict. The framers, however, did not sufficiently reckon with the mechanical changes in society that were then beginning. They did not anticipate, and could not have anticipated, the centripetal influences of steam and electricity which have woven the American people into an indissoluble unit for commercial and many other purposes. As a result many laws of the Federal Government, in their incidences in this complex age, directly impinge upon rights of the State governments, and *vice versa*, and the practical application of the Constitution has required a very subtle adaptation of a form of government, enacted in a primitive age, to one of a complex age.

Thus the Federal Government was given plenary power over foreign commerce and commerce *among* the States, but the power over commerce *within* a State, was reserved to State governments. This presupposed the power of government to divide commerce into two water-tight compartments, or, at least, to regard the two spheres of power as parallel lines that would never meet; whereas, with the coming of the railroad, steamship and the telegraph, commerce has become so unified that the parallel lines have become lines of interlacing zigzags. To adapt the commerce clause of the Constitution to these changed conditions has required the constructive genius of the Supreme Court of the United States, and, in a series of very remarkable decisions, which are contained in 263 volumes of the official reports, that great tribunal has tried to draw a line between inter-State and domestic commerce as nearly to the original plans of the framers as it was possible; but obviously there has been so much adaptation to make this possible that if Washington, Franklin, Madison and Hamilton could revisit

the nation they created they would not recognize their own handiwork.

For the same reason, the dual system of government has been profoundly modified by the great elemental forces of our mechanical age, so that the scales, which try to hold in nice equipoise the Federal Government on the one hand and the States on the other, have been greatly disturbed. Originally, the States were the powerful political entities, and the central government a mere agent for certain specific purposes; but, in the development of the Constitution, the nation has naturally become of overshadowing importance, while the States have relatively steadily diminished in power and prestige.

These inevitable tendencies in American politics are called "centralization," and while for nearly a century a great political party bitterly contested its steady progress, due to the centripetal influences above indicated, yet the contest was long since abandoned as a hopeless one, and the struggle to-day is rather to keep, so far as possible, the inevitable tendency measurably in check.

Nevertheless, it would be erroneous to suggest that the dual system of government is a failure. It still endures in providing a large measure of authority to the States in their purely domestic concerns, and, in a country that extends from the Atlantic to the Pacific, and from the Lakes to the Gulf, whose northern border is not very far from the Arctic Circle, and whose southern border is not many degrees from the Equator, there are such differences in the habits, conventions, and ideals of the people that without this dual form of government the Constitution would long since have broken down. It is not too much to say that the success with which the framers of the Constitution reconciled national supremacy and efficiency with local self-government is one of the great achievements in the history of mankind.

3.

The third principle was the guaranty of individual liberty through constitutional limitations.

This marked another great contribution of America to the

science of government. In all previous government building, the State was regarded as a sovereign, which could grant to individuals or classes out of its plenary power certain privileges or exemptions, which were called "liberties." Thus the liberties which the barons wrung from King John at Runnymede were virtually exemptions from the power of government. The Fathers did not believe in the sovereignty of the State in the sense of absolute power, nor did they believe in the sovereignty of the people in that sense. The word "sovereignty" will not be found in the Constitution or the Declaration of Independence. They believed that each individual, as a responsible moral being, had certain "inalienable rights" which neither the State nor the people could rightfully take from him.

This conception of individualism, enforced in courts of law against executives and legislatures, was wholly new and is the distinguishing characteristic of American constitutionalism. As to such reserved rights, guaranteed by Constitutional limitations, and largely by the first ten Amendments to the Constitution, a man, by virtue of his inherent and God-given dignity as a human soul, has rights, such as freedom of the Press, liberty of speech, property rights, and religious freedom, which even one hundred millions of people cannot rightfully take from him, without amending the Constitution. The Framers did not believe that the oil of anointing that was supposed to sanctify the monarch and give him infallibility had fallen upon the "multitudinous tongue" of the people to give it either infallibility or omnipotence. They believed in individualism. They were animated by a sleepless jealousy of governmental power. They believed that the greater such power, the greater the danger of its abuse. They felt that the individual could generally best work out his own salvation, and that his constant prayer to government was that of Diogenes to Alexander: "Keep out of my sunlight." The worth and dignity of the human soul, the free competition of man and man, the nobility of labor, the right to work, free from the tyranny of state or class, this was their gospel. Socialism was to them abhorrent.

This theory of government gave a new dignity to manhood.

It said to the State: "There is a limit to your power. Thus far and no farther, and here shall thy proud waves be stayed."

4.

Closely allied to this doctrine of limited governmental powers, even by a majority, is the fourth principle of an independent judiciary.

It is the balance wheel of the Constitution, and to function it must be beyond the possibility of attack and destruction. This country was founded upon the rock of property rights and the sanctity of contracts. The several States are forbidden to impair the obligation of contracts, nor can Congress take away life, liberty, or property "without due process of law." The guarantee is as old as Magna Charta; for "due process of law" is but a paraphrase of "the law of the land," without which no freeman could be deprived of his liberties or possessions.

"Due process of law" means that there are certain fundamental principles of liberty, not defined or even enumerated in the Constitution, but having their sanction in the free and enlightened conscience of just men, and that no man can be deprived of life, liberty, or property, except in conformity with these fundamental decencies of liberty. To protect these even against the will of a majority, however large, the judiciary was given unprecedented powers. It threw about the individual the solemn circle of the law. It made the judiciary the final conscience of the nation. England cherishes the same primal verities of liberty, but with the very substantial difference that in England the people in Parliament are the final judge. The Constitution was not content that a majority of the Legislature or even of the people should override inviolable individual rights about which the judiciary is empowered to throw the solemn circle of the law.

A very profound student of governmental institutions, Sir Henry Maine, attributes the amazing prosperity of America to a considerable extent to this inviolability of property rights, which, in their last analysis, are personal rights. He says:

"All this beneficent prosperity reposes on the sacredness of contract and the stability of private property; the first the implement, and the last the reward of success in the universal competition."

He adds that the contract clause has been "the bulwark of American individualism against democratic impatience and socialistic fantasy."

This august power has won the admiration of the world, and by many is regarded as a novel contribution to the science of government. The idea, however, was not wholly novel. As previously shown, four Chief Justices of England had intimated that an Act of Parliament, if against common right and reason, might be treated as null and void; while in France the power of the judiciary to refuse efficacy to a law, unless sanctioned by the judiciary, had been the cause of a long struggle for at least three centuries between the French monarch and the courts of France. However, in England the doctrine of the common law yielded to the later doctrine of the omnipotence of Parliament, while in France the revisory power of the judiciary was terminated by the French Revolution.

The United States, however, embodied it in its form of government and thus made the judiciary, and especially the Supreme Court, the balance wheel of the Constitution. Without such power the Constitution could never have lasted, for neither executive officers nor legislatures are good judges of the extent of their own powers.

Nothing more strikingly shows the spirit of unity which the Constitution brought into being than the unbroken success with which the Supreme Court has discharged this difficult and most delicate duty. The President is the Commander-in-Chief of the Army and the Navy and can call them to his aid. The legislature has almost unlimited power through its control of the public purse. The States have their power reinforced by armed forces, and some of them are as great in population and resources as many of the nations of Europe. The Supreme Court, however, has only one officer to execute its decrees, called the United States Marshal; and yet, when the Supreme Court, without sword or purse, and with only a high sheriff

to enforce its mandates, says to a President or to a Congress or to the authorities of a great—and, in some respects, sovereign—State that they must do this or must refrain from doing that, the mandate is at once obeyed. Here, indeed, is the American ideal of “a government of laws and not of men” most strikingly realized; and if the American Constitution, as formulated and developed, had done nothing else than to establish in this manner the supremacy of law, even as against the overwhelming sentiment of the people, it would have justified the well-known encomium of Mr. Gladstone.

It must be added, however, that in one respect this function of the judiciary has had an unfortunate effect in lessening rather than developing in the people the sense of constitutional morality. In England the power of Parliament is omnipotent, and yet in its legislation it voluntarily observes these great fundamental decencies of liberty, which in the American Constitution are protected by formal guarantees. This can only be true because either Parliament has a deep sense of constitutional morality, or the constituencies which select its members have so strong a sense of constitutional justice that their representatives dare not disregard these fundamental decencies of liberty.

In the United States, however, the confidence that the Supreme Court will itself protect these guaranties of liberty has led to a diminution of the sense of constitutional morality, both in the people and their representatives. It abates the vigilance which is said to be ever the price of liberty.

Laws are passed which transgress the limitations of the Constitution without adequate discussion as to their unconstitutional character, for the reason that the determination of this fact is erroneously supposed to be the exclusive function of the judiciary.

The judiciary, contrary to the common supposition, has no plenary power to nullify unconstitutional laws. It can act only in cases in which concrete questions are presented for their consideration and only in cases involving justiciable as distinguished from strictly political questions. Moreover, the judiciary can declare legislation unconstitutional only when there

is an irreconcilable and indubitable repugnancy between a law and the Constitution; but obviously laws can be passed from motives that are anti-constitutional, and there is a wide sphere of political discretion in which many acts can be done which, while politically anti-constitutional, are not juridically unconstitutional. For this reason the undue dependence upon the judiciary to nullify every law, which either in form, necessary operation, or motive transgresses the Constitution, has so far lessened the vigilance of the people to protect their own Constitution as to lead to its serious impairment.

No tendency of the time may be more perilous than that virtual abdication—not only by the people but by their Representatives in Congress—of the duty to determine for themselves whether a law is within the competence of the Federal Government. It not only puts upon the Supreme Court of the Nation an impossible burden, but is destructive of that spirit of constitutional morality in the people, without which no constitution can long endure. Nothing was further from the spirit of those who framed the Constitution than to rest the preservation of their liberties upon the power of a court,—even though that Court has restricted authority to preserve the Constitution through the processes of litigation.

Chief Justice Marshall recognized this when he said in the greatest of his many great opinions (*Gibbons v. Ogden*, 9 Wheat. 1) :

“The wisdom and discretion of Congress, their identity with the people, and the influence which their constituents possess at elections, are, in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied, to secure them from its abuse. They are the restraints, on which the people must often rely solely, in all representative governments.”

The success of the Constitution has depended so largely upon the judicial machinery of the Nation and especially the Supreme Court, that a more extended description of that “more than Amphictyonic council”—to use Pinckney’s expression—justifies a separate chapter.

CHAPTER XVIII

THE BALANCE-WHEEL OF THE CONSTITUTION

"If the Judiciary be struck from the system, what is there of any value that will remain; for government cannot subsist without it? It would be as rational to talk of a solar system without a sun."

—William Wirt.

5.

POSSIBLY no provision of the Constitution is of greater interest to the publicists of other nations than this unique tribunal.*

Let the reader imagine himself in the noble Capitol of the American Republic. Passing through the great rotunda—not unworthy of Michael Angelo—he would turn from the corridor into a semi-circular room with a colonnade of Ionic pillars and vaulted roof, and thus find himself in one of the simplest and yet most impressive courtrooms in the world. It was once the Senate Chamber of the United States, and within its walls were heard the eloquent voices of some of the greatest orators and statesmen that America ever gave to posterity. In the formative period of the Republic's growth, when it was uncertain whether the new nation would be a mere league of States or a powerful consolidated nation, these Ionic pillars were mute auditors to the great political discussions in which Daniel Webster, Henry Clay, and John C. Calhoun participated. Now for half a century the "tumult and the shouting" of political strife have died away, and there remains the calm and serene atmosphere of a court of justice, whose judgments and mandates control the destinies

* When the author was invited in the summer of 1922 to deliver an address to the French bench and bar in the *Cour de Cassation*, and was asked what subject they wished him to treat, they at once replied: "The Supreme Court of the United States."

of a vast empire upon which the sun never sets. The Esquimaux, living in the long night of the Arctic winter in the farthest verge of Alaska, to the Moro savages of the Philippines, near the gateway of China, are alike subject to the decrees of this court.

The Constitution secures for all time the independence of each of these Justices, for they hold, to quote the Constitution, "their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office." Wise indeed were the Framers, for if these judges had been elected by the people on short tenures of office how different would our Constitutional history have been. Each of them has been appointed after a careful scrutiny and with a meticulous care that may not exist in equal measure in any other judicial system in the world. The President nominates the prospective Justice, but his appointment being "with the advice and consent of the Senate" must have the approval of a majority of that body, which, on terms of equality, peculiarly represents the forty-eight constituent States. While such advice and consent is in practice often perfunctory in the case of many other executive appointments, yet this is not true of nominations to the Supreme Court. When the President is considering a possible nomination, the fact is generally given to the public by an inspired intimation from the White House. At once the fierce light of publicity is turned upon the prospective nominee. His past as a lawyer and public man is subjected to the severest scrutiny. Public opinion will not tolerate that any one who has not won distinction at the bar or on the bench, and who has not as a public man become generally known throughout the United States, shall be considered. When the nomination is made, the Committee on the Judiciary of the Senate makes a more careful examination than in the case of any other public official, and if there be any charge, affecting either his character or ability, the Committee carefully inquires into its truth or falsity. Upon the report of this Committee, the full Senate, in executive and therefore secret session, reconsiders the matter, and only when a majority of that body gives

its approval can the President issue the commission. As a result the Justices of the Supreme Court have been, with few exceptions, lawyers of distinction and public men of general reputation. The reason for this meticulous care is not only because of the grave nature of the duties and the potential political power of a Justice of the Supreme Court, but because he holds his office for life and can never be removed except by impeachment for high crimes and misdemeanors. Only once since the Court was constituted in 1790 was a Justice impeached, and the charges preferred against Chase were more political than personal.

Ordinarily, but not always, the President nominates one of his own political party, but it is not regarded as a party appointment, and, with few exceptions, men have forgotten their political affiliations, and even their social tendencies, when they merged their identity into the Bench. Ardent believers in States rights have become zealous nationalists; social radicals, conservatives; and conservatives, economic radicals. The prestige of the court has thus been due to the fact that it has not only been regarded, but, in effect, has proved itself to be, above the clamor of political strife.

The work of the court is as great in quality as it is in quantity, for there is no court in the world, with the possible exception of the Judicial Committee of the Privy Council, which is called upon to consider so many complex and important questions.

In several respects its jurisdiction is broader and its work more difficult than the Privy Council. It has both original and appellate jurisdiction. Original jurisdiction only arises in cases "affecting ambassadors, other public ministers and consuls, and those in which a State shall be party." Under these clauses of the Constitution the sovereign States implead each other or are sued by the United States in cases which are often of immense importance. Each term there are twenty-five or thirty cases instituted by a State or by the United States, and in this way questions of boundaries and disputes as to riparian rights in interstate rivers, and as to injuries inflicted upon the people of one State by the people of another—as, for example, from

the noxious fumes of smelting plants located near a State boundary—are tried as in a court of first and last instance. In all other cases the jurisdiction of the Supreme Court is purely appellate.

As previously explained, in the American conception of government there is no absolute sovereignty. The powers of government, especially those vested in the Federal Government by the Constitution, are limited, and beyond those limits the Government may not impose its will upon the individual. The Constitution of the United States is not a code of law, but a charter of government. It seeks to distribute powers between two classes of government—one, the constituent States, and the other the Federal Government. This distribution of power was made in very general terms. As Chief Justice Marshall pointed out, the powers granted in the Constitution to the federated nation and to the constituent States respectively, were merely “enumerated” and not “defined.” In defining them, by application in the practical administration of government, considerable adaptation is necessary to the changing circumstances of the most progressive age in history. Thus, the Supreme Court is not only a court of justice, but in a qualified sense a *continuous constitutional convention*. It continues the work of the Convention of 1787 by adapting through interpretation the great charter of government, and thus its duties become political, in the highest sense of that word, as well as judicial.

What is the historical origin of this extraordinary politico-judicial tribunal? When the colonists in 1781 adopted their first charter of government (the so-called Articles of Confederation), they gave to Congress not only legislative and executive powers, but also the judicial power to decide—

“all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other cause whatever.”

Before the Constitutional Convention of 1787 had met, new

influences were influencing the founders of the new State. Many of them were students of Montesquieu, and none of his doctrines had made a deeper impression than that which suggested, as an ultimate truth, that the union of legislative, executive, and judicial powers in any one man or body of men could only mean tyranny and that the safety of the State lay in a separation of these three powers. The framers of the Constitution were students of government and history, and therefore they must have also followed with interest the long struggle in France which had culminated in a *coup d'état* a short time before the Philadelphia Constitutional Convention met. The highest court of France was known as the Parlement, from which England's Parliament derives its name. Originally a mere *curia regis*, which had during the reign of Louis XIII developed into an independent magistracy not dissimilar to the English Inns of Courts, the magistrates before the middle of the fourteenth century were not merely the advisers of the King but independent judges *de jure* as well as *de facto*, and early in the fifteenth century the King did not disdain to appear before the Parlement as plaintiff or defendant in cases concerning the Crown.

This Parlement had slowly developed the power to nullify a law when it deemed it unjust or ever unwise. Ordinarily, all legislation originated with the King and his Council, but their edicts had no efficacy until "registered" by the Judiciary. If the Judiciary refused to register, the King could hold a *lit de justice*, by which he either attended the courts or summoned the judges in his presence, heard their remonstrances against the proposed law, and then either withdrew it or directed them to register it. Frequently the judges again refused to do so, and thereupon a conflict arose, the weapon of the King being to imprison the judges and that of the judges to declare a boycott by suspending the work of the courts. As some one has said, the Parlement "was weak under a strong king and strong under a weak king"; but the fact remains that from the time of Louis XIV until the French Revolution the history of France was marked by a continuous battle, with varying fortunes, between

the arbitrary power of the King and the judicial power of the Parlement.*

The Constitution recognized that, however meritorious the struggle of the Parlement was against executive tyranny, yet it unwisely offended Montesquieu's doctrine by assuming not only judicial but essentially legislative powers, for the Parlement claimed the power to invalidate a law by refusing to register not only because it was *ultra vires*, but because it was unwise.

Notwithstanding this, some of the ablest men in the Philadelphia Convention were apparently willing to accept the French model in its entirety. It was therefore proposed that the President and the Supreme Court should constitute a "council of revision," with power to nullify any Act of Congress or of a State legislature which they deemed unauthorized or even inexpedient. Voted down on June 6, 1787, an attempt was again made on July 21st to incorporate such a council of revision into the Constitution, and this time the dangerous proposition was voted down by a bare majority of the vote of one State. Not content with this double defeat, Madison, Wilson, the ablest lawyer in the body, and others again renewed the motion and again it was defeated.

* Thus, in the reign of Francis I, when the Concordat with the Pope repealed the pragmatic sanction of Charles VII, the Parlement refused for two years to register the Concordat. Again, in 1557, Henry II attempted to legalize the inquisition as a political institution in France, and again the Judiciary refused to recognize the law.

At the very time that Cromwell and his Roundheads were rebelling against the Stuarts, a similar civil war was being waged in France, called the "War of the Fronde," due to an attempt by Mazarin to throw the leading judges into prison.

The struggle became acute in the reign of Louis XV. Madame du Barry had in her apartment a portrait of Charles I of England, and frequently called it to the attention of her royal lover, by saying, "Louis, the Parlement will cut off your head, too."

In 1771 Louis XV attempted to throw all the judges into prison; and in 1787, when the founders of the American Republic were framing its Constitution, the French King again attempted to compel the judges to register two edicts which provided for a stamp duty and a land tax. To escape arrest the judges attempted to sit continuously in session, believing that if actually on the bench their immunity would be respected; but after being in session for thirty-six hours the King's soldiers broke into the *Palais de Justice* and carried the entire court into custody. These startling events, offending the maxim of Montesquieu, must have had a pronounced influence upon the framers of the Constitution.

The framers of the Constitution thereupon wisely separated legislative from judicial power. Recognizing the possibility of improvident legislation, the Constitution provided as a substitute for the French Parlement that the President could veto any act of Congress with the proviso that it could nevertheless become a law if repassed by a vote of two-thirds of each House of Congress.

Having thus provided for an additional curb on legislative errors, the Constitution thereupon proceeded to create a federal judiciary and to limit its functions to purely judicial duties. The Constitution provides that—

“The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.”

It defines their jurisdiction by providing that—

“The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting Ambassadors, other public Ministers and Consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a Party;—to controversies between two or more States;—between a State and citizens of another State;—between citizens of different States;—between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.”

This, however, is not the full definition of the power, for the Constitution also contains the great affirmation so essential in a dual form of government—

“This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made or which shall be made, under the authority of the

United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

Reading these provisions together, the great function of the Supreme Court, as the balance wheel of the Constitution, is not a mere implication, as some jurists have supposed, but is a direct and conscious creation by express and unmistakable language. The power of the court to disregard (technically it does not nullify) any law of a State or of the Federal Congress or any act of any public official in violation of the provisions of the Constitution was clearly recognized in the debates of the Convention. Indeed, prior to the Convention, in isolated instances, colonial courts, following Chief Justice Coke's famous *dictum*, had nullified the acts of colonial legislatures as unconstitutional. The power thus affirmed as a *dictum* by Coke (but then denied any practical existence in the Mother Country) was to become the cornerstone of the American political system; and later this indestructible stone was to become in the federal system of the British Commonwealth of Nations the very "head of the corner."

The Constitution made the Supreme Court the final conscience of the nation with respect to the powers of government, and such it has continued to be with unbroken success to this day.

This great power to curb legislatures and executives, and therefore majorities, by resort to the paramount will of a written Constitution, has been exerted for over 130 years, and while not infrequently the party whose power is thus curbed has vented its wrath and disappointment upon the Supreme Court, yet after the thunder of political debate has passed and the earthquake of party passion has spent its force, the "still small voice" of the Supreme Court has always prevailed. Each time the will of the majority is nullified, because inconsistent with the fundamental law, threats are made, as are now being made, to destroy this power, or at least to impair it by requiring the concurrence of seven out of nine Justices before a statute can be nullified.

The most effective restraint which freemen have ever imposed upon themselves is this extraordinary power of the Supreme Court. The value of such a restraint upon precipitate action is so great that it is improbable that the American people will, at least in the near future, thus destroy the efficacy of the great balance wheel.

As such, this Court has administered justice for over a century. No scandal has ever sullied its fair fame and against its mandates there has never been any lasting protest. Its laws were not silent even during the fratricidal strife of a tragic civil war.

When President Washington requested the court to give an advisory opinion as to the validity of certain treaties with France, the court declined, holding, to quote Chief Justice Marshall, that it was "merely a legal tribunal for the decision of controversies brought before them in legal form." Undoubtedly this principle has in its practical working some disadvantages, for a law will be passed, acted upon as presumably valid not only by the Government but by the people, and then some years later, in a litigated case, a question will arise as to its validity and when the decision is adverse it cannot undo the harm which the prior enforcement of the law has brought about.

The most striking example in American history was the law passed in 1820 and known as the Missouri Compromise. It was an attempt to end the slavery question by a Congressional agreement, embodied in a statute, defining the territorial limits in which slavery would be permitted or forbidden respectively. Had the Supreme Court had at that time an advisory power to determine in advance of the enforcement of a law whether it was valid, the terrible sequel might never have taken place. Having no such power, the law went into effect and was never questioned until 1857, when, in the famous *Dred Scott Case*, the question arose whether a slave, who had gone from a slave State to a free State and had then returned to the former, would again become a slave. The Supreme Court decided that Congress had no power to exclude slavery from any territory and that the Missouri Compromise was therefore unconstitutional.

The decision which thus upset a great political settlement shook the country to its very foundations, and while the Civil War, which soon followed, was probably an *immedicabile vulnus* and only curable by the sword, yet no single cause did more to precipitate the greatest civil war in history.

Nevertheless, if the Supreme Court adopted a different principle it would mean that whenever the passage of a law is under consideration and great and powerful racial and class interests are arrayed on either side the Court would be plunged into a heated political controversy by being obliged to give an anticipatory opinion whether the law was or was not invalid. Under these circumstances its prestige would be quickly shattered, and with such fall of the keystone the whole Federal arch might crumble into cureless ruin. Moreover, there is great advantage in thus deciding constitutional principles in concrete cases and not as academic abstractions.

Another principle which the court adopted was that no law should be declared invalid unless its incompatibility with the Constitution was clear beyond reasonable doubt. All doubts were to be resolved in favor of the legislative act. If it admitted of two constructions—the one compatible with the Constitution and the other inconsistent—the construction favorable to its constitutionality was to be accepted. The judiciary thus sought to support the legislative will. In a democracy, no other attitude would be possible.

A third principle was even more obvious. The court could not, in the manner of the French Parlement, consider the expediency of the act. The policy of the legislation was for the lawmaking body, and the only question for the court was that of legislative power, and therefore a law should be sustained by the judiciary even though in its judgment it were grossly unwise, and even immoral. This again removed from the power of the court any conflict with the popular will which might arise out of disputed questions of economics or morals. It was again the application of the Montesquieu principle of the separate functions of the legislative, executive, and judicial departments of the government.

Another principle has been found in recent years to be more

difficult of application. The powers granted to the Federal government were given for certain purposes, and theoretically their exercise is limited to such purposes. If, however, the Congress in exercising its delegated powers should do so for purposes and to attain ends that were not within the competence of the Federal Government, could the Supreme Court pass judgment upon the motives of the Congress and, being satisfied with their unconstitutional character, invalidate such perversions of delegated powers?

Chief Justice Marshall at first held, speaking *obiter*, that the court could, and this question was at the root of the bitter struggle which raged for years over the constitutionality of a protective tariff and the policy of internal improvements by federal appropriations.

Congress shortly after the Civil War, in order to build up a national banking system, sought by a prohibitive excise tax to prevent the State banks from exercising their undoubted right under State laws to issue currency notes. The court then held that it could not sit in judgment upon the motives of Congress, and that as Congress had the unquestioned power to impose an excise tax the alleged improper motive could not be taken into consideration.

This doctrine for a period of over fifty years led to such frequent perversions of federal powers as to threaten the dual system of government under the Constitution, but the court refused to modify its previous principle until, in the recent *Child Labor Cases* and the *Futures Trading Cases*, the Court held that when it could, from the body of the statute and not *aliunde*, determine that the Congress was seeking to accomplish an end beyond the competence of the Federal Government, the act could be declared invalid. If, therefore, Congress in seeking to use constitutional powers for unconstitutional ends conceals its purpose in the language of the statute, the Supreme Court still feels itself powerless by any inquiry *aliunde* into the motives of the two Houses of Congress to impugn the good faith of the legislation. The greatest peril to our institutions lies in this perversion of federal powers. It may one day

result in the destruction of our dual form of government except in name.

The Court has further recognized that in the discharge of legislative and executive functions by the Congress and the Executive, respectively, many questions of discretion will arise which involve the true meaning of the Constitution and yet are more political than justiciable in their nature. For example, the Constitution requires the Federal Government to guarantee to every State a "republican form of government," but what is essential to such a government and the method of enforcing such guarantee involve questions which, being political, are exclusively for Congress and not reviewable by the judiciary.

It is a mistaken idea that the Supreme Court has a plenary right to sit in judgment upon the constitutionality of the laws of Congress and the acts of the Executive. It can only do so when they disclose a tangible and indisputable infringement of the Constitution. But this leaves a field of political discretion in which constitutional questions of a political character may arise. Nor has the Supreme Court plenary power to enforce compliance with the Constitution. When, after the Civil War, the reconstruction acts were passed, President Johnson vetoed them as unconstitutional. But when they were passed over his veto, the Supreme Court refused to entertain a suit to restrain the President from enforcing an act, even though its constitutionality had been denied by the Executive.

All these principles and others of less importance indicate the conservatism with which the Supreme Court has exercised its great power of holding other departments of the Government, which are more directly responsive to the public will, within the limits of their constitutional powers.

The first half century of the Supreme Court was its golden age, for during that time it rendered the great pioneer decisions under our system of government. With little private litigation to tax its energies, it was then virtually and chiefly a continuation of the Constitutional Convention of 1787, with this important difference that the Supreme Court could not originate constitutional provisions, but only interpret them. The written charter was, however, so general in its outlines and so free

from definition of the powers granted, that in the task of interpretation the court virtually defined the Constitution as it now is. It was as though the framers of the Constitution had merely built a foundation and given to the Supreme Court some general plans for the superstructure. The work of the superstructure was that of the Supreme Court, which, under the masterly leadership of John Marshall, who served as Chief Justice from 1801 to 1835, slowly built up the present imposing edifice of government. It is this that gives the earlier history of the Supreme Court its surpassing interest, for in that court the ablest minds of that generation debated with meticulous care the great principles of government in the light of which the written Constitution should be applied.

It was possibly the greatest forum of intellectual debate of which civilization has any knowledge. There had been great courts before, but none had had this peculiar and extraordinary function of determining the very form of the Government whose laws it was interpreting. It was in truth a super-Senate. The principles of government were to be developed, not in the heated atmosphere and selfish conflicts of political strife, but in the serene air of a court of justice, after full debate by the greatest lawyers of the time, and by judges, who acted not as partisans but as the sworn interpreters of constitutional liberty.

The Supreme Court of the United States compels the living generation, too often swept by selfish interests and frenzied passions, to respect the immutable principles of liberty and justice. The court is thus the trustee for the unborn, for it protects their heritage from spoliation in the mad excesses of party strife of living generations. Thus, the Court must often affront the pride of power of temporary majorities.

Such has been its experience from its foundation. Continuously through its history its great decisions, when they thus defeated some momentary wish of the majority, have caused a violent but only temporary reaction against the moral power of the court.

Only a people with sufficient genius for self-restraint and willing to accept the judgments of a court as the final conscience

of the nation in matters of constitutional morality, could make such an institution workable in a proud democracy, and nothing seems nobler in the history of the American republic than the fact that while each unpopular decision of the court has been followed by a temporary attack upon its powers, yet the sober second judgment of the American people has always been to accept loyally the great arbitrament. Here, however, is no judicial tyranny. Whenever the American people dislike a statement of the law, as authoritatively declared by the Supreme Court, they may in turn establish a new law by the deliberate and orderly process of a constitutional amendment. The Eleventh Amendment substituted a new law for the old law as declared by the Supreme Court in *Chisholm vs. Georgia*, as the Sixteenth Amendment virtually set aside a like decision in *Pollock vs. Farmers Trust Company*.

The American republic has attempted for over one hundred and thirty years and on a scale unprecedentedly vast to solve the great problem of government by the people. It has been a period of fierce controversy and bitter party strife. Like the ocean, the political life of the American republic is at times placid, with hardly a ripple upon its surface, and then the furious storms of discontent lash the waters into violent and angry seas. But always the Supreme Court stands as a great lighthouse, and even when the waves beat upon it with terrific violence (as in the Civil War, when it was shaken to its very foundation), yet after they have spent their fury, the great lamp of the Constitution—as that of another Pharos—illuminates the troubled surface of the waters with the benignant rays of those immutable principles of liberty and justice, which alone can make a nation free as well as strong.

6.

The sixth basic principle of the Constitution seeks to prevent the concentration of power in any one man or body of men by a complex system of checks and balances.

It deliberately delays and restrains both the Legislature and the Executive to give ample opportunity for deliberation.

CHAPTER XIX

THE SYSTEM OF CHECKS AND BALANCES

"When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner."—Montesquieu.

NO single writer had a more profound influence upon the members of the Constitutional Convention than Montesquieu, whose *"Spirit of Laws"* first appeared in 1748. The great French philosopher, who thus so profoundly influenced the course of two political revolutions, had in turn borrowed his doctrines from John Locke.

The fundamental theory of Montesquieu was the division of power into three departments, each of which should act as a check upon the other. In his opinion, the concentration of power was fatal to liberty.

The framers of the Constitution accepted this political doctrine as an axiom.* While they desired to transfer from the

* In 1781, Jefferson wrote: "An elective despotism was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy as that no one could transcend their legal limits without being effectually checked and restrained by the others."

In 1787, John Adams wrote: "If there is one certain truth to be collected from the history of all ages, it is this: That the people's rights and liberties, and the democratic mixture in a constitution, can never be preserved without a strong executive, or, in other words, without separating the executive power from the legislature."

Said John Dickinson: "Of remedies for the diseases of republics which have flourished for a moment only and then vanished forever, one is the double branch of the legislature, and the other the accidental lucky division of this country into distinct states."

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States to the new Government a large measure of power over matters of common concern, yet they had no disposition to concentrate such power in any one magistrate or body of magistrates. They preferred to distribute the power thus transferred among three departments, which were to be theoretically independent; but they went far to destroy such complete independence—even if it were otherwise advisable—by giving to each department the power of thwarting and, at times, defeating the other departments.

Thus they created a two-chambered legislature, and a powerful executive, each of which had power to check the other, and both of which could, in turn, be restrained by the system of short but fixed tenures of office.

It would be difficult to find in the Constitution any real evidence of that independence in any of the three departments of Government which was the great ideal of Montesquieu. Each, in turn, has the strength of being able to interpose some obstacle to the other departments, and each, in turn, has the weakness that it may be similarly checked or thwarted. Powerful as is the Executive, he cannot make a treaty or appoint many officials, without the concurrence of the Senate; nor can he declare war without a like concurrence of both Houses of Congress.

In turn, a mere majority of Congress cannot make any law, if the President disapproves, and the President cannot obstruct legislation, if it be favored by two-thirds of the two branches of Congress. The Congress can limit the power of the President by many laws which prescribe his duties, and the President, in turn, can obstruct the Congress in many of its measures.

In turn, both the Executive and the Legislative are held within the strict limits of the Constitution by the judicial branch of the Government. And yet the judicial branch of the Government is, to some extent, controlled in its procedure by the legislative power of Congress. When, for example, President Jefferson did not desire the Supreme Court to decide a great case within a certain time, he procured a law which so

changed the terms of Court that that Court could not sit within the prescribed period.

No feature of the Constitution is, at this day, more debated as to its wisdom than the system of checks and balances. Although the first impression is that this brake upon efficiency is now outworn in this age of unparalleled speed, yet this conclusion is not certain.

In thus making Governmental action, whether Executive or Legislative, cumbrous and difficult, the framers again manifested their jealousy of power and their distrust of unrestrained democracy. When the Republic was small, and its public affairs were few, this system of checks and balances worked admirably, but today, when the nation is one of the greatest in the world, and its public affairs are of the most important and complicated character, and often require speedy action, the system is too often an undue brake upon governmental efficiency, and may require some modification to ensure efficiency. Indeed, it is a serious question with many thoughtful Americans whether the growth of the United States has not put an excessive strain upon its governmental machinery.

Experience has shown how difficult it is to apply this doctrine of a separation of governmental powers in its literal rigidity. One result of the doctrine was the mistaken attempt to keep the legislative and the executive as far apart as possible. The Cabinet system of parliamentary government was not adopted. While the President can appear before Congress and express his views, his Cabinet is without such right. In practice, the gulf is bridged by constant contact between the Cabinet and the committees of Congress, but this does not always secure speedy and efficient co-operation between the two departments.

This separation of the two departments, which causes so much friction, has been emphasized by one feature of the Constitution which again marks its distrust of democracy, namely the fixed tenure of office. The Constitution did not intend that public officials should rise or fall with the fleeting caprices of a constituency or of Congress. It preferred to give the

President and the members of Congress a fixed term of office, and, however unpopular they might become temporarily, they should have the right and the opportunity to proceed even with unpopular policies, and thus challenge the final verdict of the people.

If a parliamentary form of government, immediately responsive to current opinion as registered in elections, is the great desideratum, then the fixed tenure of offices is the vulnerable Achilles-heel of our form of government. In other countries the Executive cannot survive a vote of want of confidence by the legislature. In America, the President, who is merely the Executive of the legislative will, continues for his prescribed term, though he may have wholly lost the confidence of the representatives of the people in Congress. While this makes for stability in administration and keeps the ship of state on an even keel, yet it also leads to the fatalism of our democracy, and often the "native hue" of its resolution is thus "sicklied o'er with the pale cast of thought." After the sinking of the *Lusitania*, the United States would probably have entered the world war if President Wilson's tenure of power had then depended upon a vote of confidence.

No American statesman of recent times was more opposed to the system of checks and balances than the late President Wilson. Both in his published works and in his official acts, he suggested his distrust of a system of government which deliberately defeats its own powers.

In his book, *The New Freedom*, he suggests that the Constitution was made "under the dominion of the Newtonian theory." He adds that the framers—

"constructed a government as they would have constructed an orrery,—to display the laws of nature. Politics, in their thought, was a variety of mechanics. The Constitution was founded on the law of gravitation. The government was to exist and move by virtue of the efficacy of 'checks and balances.' The trouble with the theory is that government is not a machine, but a living thing. It falls, not under the theory of the universe, but under the theory of organic life. It is accountable to Darwin, not to New-

ton. It is modified by its environment, necessitated by its tasks, shaped to its function by the sheer pressure of life. No living thing can have its organs offset against each other, as checks, and live." *

No one can gainsay the force of what Mr. Wilson has thus said; but it fails to take into account that the underlying question is a balancing of evils. Undoubtedly the system of checks and balances does not make for efficiency in government. If it is for the welfare of the people that their representatives should have full and speedy power, then the Constitution cannot be commended as a model form of government. The framers were not blind to the fact that their form of government would be a brake upon swift action. Their concern was with the abuse of government, and their fear was that, if swift and unlimited power were given to the servants of the people, it would be abused—and it cannot be denied that, in this, they had the sanction of past experience. Any student of public affairs, especially in later years, must recognize that, if there were no such system of checks and balances to delay action and to give time for reflection, Congressional legislation would be a saturnalia of ill-considered laws,—especially in this day, when so many are proposed that few, if any, members of Congress can intelligently follow all of the propositions submitted for their action.

This question of the wisdom or the folly of the framers could safely be left to any experienced member of Congress, and such would probably say, with practical unanimity, that it were much better that the few good laws should fail of passage, by reason of the cumbrous machinery of legislation, rather than that the country should be overwhelmed by a destructive flood of unwise legislation, which a single-chambered legislature, subject to no check from the Executive veto, would make possible.

The wisdom of the checks and balances turns largely upon the question whether the real need of the public is for more or less laws. If the interests of the people require efficient power

* *The New Freedom*, pp. 45-47.

in grinding out new laws, -then the framers of the Constitution made a great error; but, if the welfare of the people is best subserved by the fewest possible laws, and it be true that a nation is best governed when it is least governed, then the system has been and still is admirably effective, in requiring that no law shall be passed until after a period of careful deliberation, and then only when two different departments of the Government concur in its wisdom.

One important, and, at the moment vital, principle of the Constitution remains to be discussed.

7.

The joint power of the President and Senate in the determination of the foreign policies of the United States.

This peculiar feature of American institutions has been the subject of world-wide comment in the last decade. While such comment is generally hostile, it is interesting to note that the present tendency of many European governments is to imitate the American plan of imposing such joint responsibility upon the executive and legislative departments of the government. Repeatedly in recent years, foreign ministers have submitted proposed treaties to their parliaments before final action. This follows the great precedent of the American constitution, and imitation is the sincerest flattery.

CHAPTER XX

THE CONSTITUTION AND AMERICA'S FOREIGN RELATIONS

"Observe good faith and justice towards all nations; cultivate peace and harmony with all. . . . It will be worthy of a free, enlightened, and, at no distant period, a great, nation to give to mankind the magnanimous and too novel example of a people always guided by an exalted justice and benevolence."

—George Washington.

IN recent times, no feature of the Constitution has been the subject of more earnest, and, at times, acrimonious, discussion than the joint power of the Executive and Senate over the foreign relations of the Government.

Nothing, excepting the principle of local rule, was of deeper concern to the framers of the Constitution. When it was framed, it was the accepted principle of all other nations that the control of the foreign relations of the Government was the exclusive prerogative of the Executive. In England the only limitation upon that power was the control of Parliament over the purse of the nation, and some of the great struggles in English history related to the attempt of the Crown to exact money to carry on the wars without a grant by Parliament.

The framers were unwilling to lodge any such power in the Executive, however great his powers in other respects. This was primarily due to the conception of the States that then prevailed. While they had created a central government for certain specified purposes, they yet regarded themselves as sovereign nations, and their representatives in the Senate were, in a sense, their ambassadors. They were as little inclined to permit the President of the United States to make

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treaties or declare war at will in their behalf as the European nations would be today to vest a similar authority in the League of Nations. It was, therefore, first proposed that the power to make treaties and appoint diplomatic representatives should be vested exclusively in the Senate, but as that body was not always in session, this plan was so far modified as to give the President, who is always acting, the power to *negotiate* treaties "with the advice and consent of the Senate." As to making war, the framers were not willing to entrust the power even to the President and the Senators, and it was therefore expressly provided that only Congress could take this momentous step.

Here, again, the theory of the Constitution was necessarily somewhat modified in practical administration, for under the power of nominating diplomatic representatives, negotiating treaties, and, in general, of executing the laws of the nation, the principle was soon evolved that the conduct of foreign affairs was primarily the function of the President, with the limitation that the Senate must concur in diplomatic appointments and in the validity of treaties, and that only both Houses of Congress could jointly declare war. This cumbersome system necessarily required that the President in conducting the foreign relations of the Government should keep in touch with the Senate, and such was the accepted procedure throughout the history of the nation until very recent times.

Since the Versailles conference no part of the American constitutional system has caused more adverse comment in Europe than this system. It often handicaps the United States from taking a speedy and effectual part in international negotiations, although if the President and the Senate be in harmony and collaborate in this joint responsibility, there is no necessary reason why this should be so.

While the question is very controversial at the present time, the question may be fairly asked whether this provision of the Constitution is not wise and salutary, especially at this time, when the United States has taken such a commanding position in the councils of civilization. The President is a very powerful Executive, and his tenure, while short, is fixed. Generally

he is elected by little more than a majority of the people, and sometimes, through the curious workings of the electoral college, he has been only the choice of a minority of the electorate. For these reasons, the framers of the Constitution were unwilling to vest in the President exclusively the immeasurable power of pledging the faith, man-power, and resources of the nation and of declaring war. The heterogeneous character of our population especially emphasizes the wisdom of this course, for it would be difficult, if not impossible, for an American President to make an offensive and defensive alliance with any nation or declare war against another nation without running counter to the racial interests and passions of a substantial part of the American nation. For better or worse, the United States has limited (but not destroyed, as the world war showed), its freedom to antagonize powerful nations from whose people it has drawn large numbers of its own citizenship. The domestic harmony of the nation requires that before the United States assumes treaty obligations or makes war such policy shall represent the largely preponderating sentiment of its people, and nothing could more effectually secure this end than to require the President to secure the assent of two-thirds of the Senate before making a treaty and a majority of both Houses of Congress before making war.

While this may lead, as it has in recent years, to temporary and regrettable embarrassments, yet in the long run, it may not only be better for the United States, but also in the best interests of other nations, for in this way they are safeguarded against the possible action of an Executive with whom racial instincts might still be very influential. In England, where the Government of the day is subject to immediate dismissal for want of confidence, such power over foreign relations can be safely entrusted to one man, but in the United States, with its fixed tenures of office, a President could pledge the faith and involve his nation in war against the interests and will of the people. If the President had unlimited power over our foreign relations and within the next ten years an American, whose parents were born in any European nation,

were elected on purely domestic issues, he could, with his assured four years of power, bring about a new alignment of nations and disturb the peace of the world.

The Constitution refused to grant such a power to any one man. Hence the provision for the concurrence of the legislative representatives of the nation. At all events, it constitutes a system which, as the last Presidential election showed, the American people will not willingly forego.

It is true that this system makes it difficult for the United States to participate effectively in the main purpose of the League of Nations to enforce peace by joint action at Geneva, but to ask the United States to surrender a vital part of its constitutional system, upon which its domestic peace so largely depends, in order to promote the League, seems to many as unreasonable as it would be to ask England to abolish the Crown, to which it is sincerely attached as a vital part of its system, as a contribution towards international coöperation. England would not surrender such an integral part of its system, and therefore it is not reasonable to expect a similar sacrifice of the American system, even though the meritorious purposes of the League be freely recognized.

No pretense is made in this book to discuss this very interesting and debatable question at any length or in any detail, not only because the question has been in recent years so controversial in nature, but also because its adequate treatment would require a book in itself. Men of equal wisdom and candor can take either view.

On the one hand, it may be forcibly said that the "eternal purpose" which seems to run through the ages, and which the devout may well regard as providential, has made this nation the greatest potential power of the world. If it be so now—and who disputes it—it will be even more so within the life of living man, for it is easily conceivable that the United States will within fifty years have 150,000,000, and possibly 200,000,000 of people, and with its vast resources will be as overshadowing in its importance as was the Roman Empire. Thus, it is privileged to play a stupendous part in the affairs of the world. Where such power is given, there follows, by moral

law, a consequent responsibility which this nation cannot possibly shirk. It may be urged that to make such paramount power efficient in quality and speed, the Executive must not be hampered by a Senate which, comprising many members, cannot possibly participate fully and effectively in the nice conduct of international relations. Other nations will complain, not wholly without reason, that when they sit down at the council table of the nations to discuss the welfare of the world with the representative of America they must assume such representative has plenipotentiary powers even as their representatives have, and that when an agreement is reached, after mutual concessions, that the representative of America may not thereafter plead his lack of authority.

Of this, the Versailles Conference was a notable illustration. Undoubtedly, France surrendered its right, then easily within its physical power, to insure its future peace by making the Rhine its boundary, and it only desisted from such demand upon the assurance of the President of the United States, as the representative of his country at Versailles, and the Prime Minister of England, each of whom pledged support to France in case of a new attack by its eastern neighbor. Having lost its opportunity for protection, it found that the representative of America was without any power to make any binding agreement, and this appeared to French publicists to be an impossible obstruction to international relations.

This, however, is only one possible view of the subject. So far as any injustice being done to the other signatories of the Versailles Treaty, each of them knew from the experience of a century that the representatives of America at Versailles could not bind America without the concurrence of the Senate, and all tentative commitments were necessarily made on that basis.

Leaving aside the question of injustice, there is also the view, as previously indicated, that not only the welfare of America but that of the world requires that the power of this great nation shall not be vested in any one man, as would be the case if the President, as in former days a king, could pledge the faith of his country to international commitments.

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The reason for this is peculiar to America, for it is not a nation separate and apart from other peoples—but an amalgamation of all the nations that compose western civilization. All the cross currents of Europe have their influence in America.

May it not be urged that the larger view is that the welfare of the world would be better conserved if this nation of overshadowing power shall not be committed to any policy unless it fairly represents the preponderant will of America, and that this is effectively secured when the foreign policies of America require the concurrence not only of the President but of the Senators as Ambassadors of the sovereign States?

This is peculiarly true because with America's system of fixed tenure of office it has in no true sense a parliamentary form of government; and if the immeasurable power of America is to be committed to one man, then, to preserve the ideal of democracy in the vital matter of foreign relations, the fixed tenure of office should be abolished and the President's tenure of office should depend upon the confidence of the representatives of the people as expressed from time to time. In that event, the concurrence of the Senate would be unnecessary, for if the President attempted to commit his country to a policy, with which the American people had no sympathy, the fact would be quickly manifested and he would be immediately shorn of his power.

If, however, he is to have a fixed tenure of office, while the period of that tenure is short, yet, as the World War showed, the whole world can be overturned within much less than the space of four years, and therefore a President, who had unlimited power for that period of time, could before the termination of his office not only fatally implicate his country in policies with which it had no sympathy but he could shake the political equilibrium of the world.

No present exigency or temporary disappointment at the failure of the United States to participate in the League of Nations should influence the American people to so radical a departure from the policy of the Constitution as would be involved in making the President the exclusive power in deter-

mining the relations of the United States to the rest of the world.

One value of this principle is that it protects the "golden rule" of our foreign policy, as formulated by the Founder of the Republic in that noblest state document of a personal nature—the Farewell Address. In recent years, this statement of our foreign policy, drafted by Hamilton, but modified by Washington, has been criticized, even by many thoughtful Americans, as now outworn, but the policy is as true today as it was when it was announced in 1796.

No traditional policy has been more grossly misinterpreted. It did not condemn the United States to a policy of isolation. Speaking as "an old and affectionate friend," Washington warned the future generations of America against any attempt "to implicate ourselves, by *artificial* ties in the *ordinary* vicissitudes of her (Europe's) politics, or the *ordinary* combination and collisions of her friendships or enmities."

The italicized words are most significant, although too generally overlooked.

In Hamilton's draft of this portion of the Farewell Address, the word "ordinary" was used only once. Washington, in his final revision of this noble and pathetic farewell to his people, emphasized his qualification of a general principle by repeating the word. Thus, by necessary implication, he recognized that there were European questions, which were not "ordinary" in character, and which so far affected the welfare of the world, that the United States had a legitimate interest in them. To meet "*extraordinary emergencies*"—as that of 1914-18—Washington advocated "*temporary alliances*." The great alliance of the World War thus marked no departure from Washington's foreign policy. This great principle has been misinterpreted by many Americans, who attribute to Washington a purpose to condemn the United States forever to a policy of narrow and selfish isolation. Nothing was further from either his purpose or his masterful personality.

CHAPTER XXI

A CENTURY LATER

"Our Constitution is in actual operation; everything appears to promise it will last; but in this world nothing is certain but death and taxes."—FRANKLIN.

WHEN the faithful band of thirty-nine delegates adjourned to the City Tavern for the final dinner, it is not improbable that they discussed the future and wondered how permanent the result of their labors would be. Few, if any, were hopeful. They doubted—and had good reason to doubt—whether the States would even ratify their action. But, if ratified, the question may have suggested itself whether the Constitution, on the merits of which few were agreed and about which they had debated for four long months, would be more than a temporary bridge to span the gulf of social disorder.

In the course of the debates, Mr. Gorham, of Massachusetts, had suggested that no one would be rash enough to suppose that the Government which they had planned could last for one hundred and fifty years. After the manner of our ephemeral human nature, it is altogether probable that few considered the question further than the immediate future.

One there was who was always looking into the future with the prescience of a seer; and now, with the full weight of his eighty-one years, he stood, like Moses upon the brow of Mt. Pisgah, vainly straining his vision to get a glimpse of that Promised Land, into which, like Moses, he could not hope to enter.

Franklin had said, on one occasion:

"I wish it were possible to invent a method of embalming drowned persons in such a manner that they may be re-

called to life at any period, however distant; *for, having a very urgent desire to see and observe the state of America a hundred years hence*, I should prefer to any ordinary death being immersed in a cask of Madeira wine with a few friends till that time, to be then recalled to life by the solar warmth of my dear country."

Let us suppose that this vision has been accorded to him and his dearest friend on that occasion, and that Washington and Franklin, at the close of the dinner at the City Tavern, had fallen into a deep sleep, and, through the medium of a dream, had been privileged to revisit the scene of their achievements precisely one hundred years later. Let us suppose that they had thus revisited the streets of Philadelphia on September 17th, 1887, when the Nation celebrated the one hundredth anniversary of the close of the Constitutional Convention.

Franklin's little city of thirty thousand people had grown to be a municipality of one million people, and was now one of the great cities of the world. The Nation, which Washington had so nobly led to independence and to a stable and efficient government, had grown from three millions to sixty millions.

They would have found Philadelphia celebrating a high festival in honor of their achievement. In its harbors, lay the great warships of the nascent American navy, of whose prodigious power of destruction neither Franklin nor Washington would ever have dreamed. Its streets were crowded by tumultuous and vociferous thousands, proclaiming with the joyous "*io triomphe*" of a proud and exultant people, the completion of one hundred years of successful history.

Three days were given to the celebration which was had at the invitation of the hospitable and historic City of Philadelphia, and under the auspices of the National Government. On one day, the mighty industries of America were represented by appropriate floats and exhibits, which, passing through streets aflame with flags and decorations, required many hours to pass a given point.

On another day, Washington would have beheld the martial splendor of the United States; for, down the chief highway of the City of Philadelphia, marched the organized militia of the

original Thirteen States, headed by their respective Governors, and preceded by the National Army, at whose head rode, amid the acclamation of the multitude, one of the great heroes of the Civil War, Major General Philip Sheridan.

On September 17th, 1887, precisely one hundred years later, a hundred thousand people gathered in the state yard in the rear of Independence Hall. In front of the ancient tower of Independence Hall, from whose belfry independence had been proclaimed, a great stand was erected, upon which sat the representatives of the Nation. The lineal successor of George Washington, President Cleveland, with his beautiful young wife, graced the occasion with their presence. Near him sat a former President of the United States, Rutherford B. Hayes. Behind them sat the Chief Justice and the Associate Justices of the Supreme Court of the United States. Grouped about these leading figures was a considerable representation of the Senate and House of Representatives. Near them sat the Ambassadors and Ministers of nearly every nation in the world, to attest by their presence its universal admiration for America's supreme achievement in statecraft.

To the left of the notables was a massed chorus of one thousand voices who fittingly gave Mendelssohn's musical rendition of Schiller's *Appeal to Truth*, and sang an original ode, whose proud refrain, referring obviously to Franklin's closing prediction in the Constitutional Convention, was:

"Thy sun has risen and shall not set
Upon thy day divine.
Ages, and unborn ages yet,
America, are thine."

A noble and appreciative oration was fittingly delivered by Samuel F. Miller, who, as Senior Justice of the Supreme Court of the United States, was the orator of the day.

Amid the acclaims of the great multitude, President Cleveland, the lineal successor of George Washington, then spoke:

"Every American citizen should today rejoice in his citizenship. He will not find the cause of his rejoicing in the antiquity of his country,—for among the nations

of the earth his stands with the youngest. He will not find it in the glitter and pomp that bedeck a monarch and dazzle abject and servile subjects,—for in his country the people themselves are rulers. He will not find it in the story of bloody foreign conquests,—for his government has been content to care for its own domain and people. He should rejoice because the work of framing our Constitution was completed one hundred years ago to-day, and also because completed it established a free government. He should rejoice because this Constitution and government have survived so long, and also because they have survived with so many blessings and have demonstrated so fully the strength and value of popular rule. He should rejoice in the wondrous growth and achievements of the past one hundred years, and also in the glorious promise of the Constitution through centuries to come.”

After referring to the difficulties under which the Fathers had labored, President Cleveland concluded by saying:

“When we look down one hundred years and see the origin of our Constitution, when we contemplate all its trials and triumphs, when we realize how completely the principles upon which it is based have met every national need and every national peril, how devoutly should we say with Franklin, ‘God governs in the affairs of men,’ and how solemn should be the thought that to us is delivered this ark of the people’s covenant and to us is given the duty to shield it from impious hands. It comes to us sealed with the test of a century. It has been found sufficient in the past, and it will be found sufficient in all the years to come, if American people are true to their sacred trust. Another centennial day will come, and millions yet unborn will inquire concerning our stewardship and the safety of the Constitution. God grant they may find it unimpaired; and as we rejoice to-day in the patriotism and devotion of those who lived one hundred years ago, so may those who follow us rejoice in our fidelity and love for Constitutional liberty.”

Had Washington and Franklin been there in spirit and had then been permitted to review the events which had happened

in America since they had been gathered to their fathers, they would have appreciated that the Constitution, as it existed a century later, had been developed as much by successive generations as by their own. They would have realized that, when they parted company at the City Tavern—never again to meet as a body of men—that the true work of Constitution building was only beginning, and that all that they had done was to light a torch which they were to pass on to succeeding generations, and that that torch would be speedily extinguished if their successors were not worthy of the sacred trust. They would have been deeply interested to know that the bitter divisions in the Convention between those who wanted to create an efficient and powerful Nation, on the one hand, and those who preferred a mere League of States, on the other, had continued long after their death. Washington would have rejoiced that his young friend, John Marshall, of Virginia, had been the chief torch-bearer in expounding, as Chief Justice of the United States, the Constitution, and, to change the metaphor, had erected, with his profound vision of the future, a fitting superstructure upon the foundation work of the Convention.

He would have been enthralled to read of the bitter struggle of the third decade of the nineteenth century between these contending forces, not merely in the Supreme Court of the United States, where the fundamental questions of Constitutional government were discussed with a depth of wisdom and an eloquence of expression never before or since equalled; but also in the Senate of the United States, where men, who were unborn when the Fathers separated at the City Tavern, were defending with matchless power the conception of a National Government, for which Washington, Franklin, Madison and Hamilton had so valorously fought.

Possibly no single message of his successors in office would have impressed Washington more deeply than the now almost forgotten but masterly anathema of Andrew Jackson against the Ordinance of South Carolina which sought to nullify a Federal law and destroy Federal power.

With what anguish of spirit Washington would have learned

that this irrepressible conflict had finally precipitated the people, whom he had led to high achievement, into the most tragic civil war in history; but if he had followed the awful cataclysm of the Civil War and the travail of Abraham Lincoln, yet, on this September 17th, 1887, Washington would have realized that all this was as necessary as was the travail of the Constitutional Convention to give birth to a powerful and efficient Union, and he would have felt that the full reward of his lifelong service to the cause of the Union had been repaid, when, a century later, a united people met to acclaim, with unstinted praise and the most joyous optimism, the perpetuity of the Constitution.

Franklin's thoughts on that day would probably have been of a more utilitarian character; for he would have seen more clearly than Washington that the world of September 17th, 1887, was a very different world than the one that his eyes had closed upon in 1790. With amazement, he would have viewed the majestic changes of the nineteenth century, and, with his philosophical grasp, would have recognized that they were far more revolutionary than all the changes that had come to mankind from the time of Christ to the period of the Great Convention.

In his day, man had been limited by the great and eternal entities of space and time, and it would have amazed and delighted the old doctor, with his inventive genius, to see how far man, in the little space of time that had elapsed from his death to the centennial anniversary, had annihilated both time and space. His had been the age of the wheelbarrow and this was the age of steam and electricity. Equipped with dynamic forces that were a thousand-fold greater than any of which Franklin even dreamed, the little Nation of his day, which hardly extended beyond the Allegheny Mountains, had now subdued the vast continent, even to the Pacific, and had developed into great and prosperous States the wilderness west of the Mississippi, which was as unknown and mysterious to Franklin as was, in our own time, the dark continent of Africa to a recent generation.

Remembering his hand press, with which he could strike

off a few hundred copies of his *Pennsylvania Gazette* in a single day, to be sent by post riders to the limited few who had the means to purchase them, he would have been amazed at the modern rotary press, which could print a half million copies in a single night of a newspaper which was at least a hundred times as large as Franklin's periodical.

Remembering his long and arduous journeys in the service of his country, when it would take him four days to visit his great friend at Mt. Vernon, he would stand stupefied at a vehicle which could move at sixty miles a hour, leaping across rivers, burrowing through mountains, and traversing, with ease and comfort, what were once unknown and untraversable deserts.

How amazed Franklin would have been at the development of the local institutions of Philadelphia to which he, with his prodigious activity, had given the initiative! The unpaved and unlighted streets were now sheathed with concrete and at night illuminated by thousands of electric lights. The inns and taverns which he well knew—for even Sir John Falstaff could not more joyously take his ease in his inn than “rare Ben Franklin”—had now grown to stupendous structures of thirty stories, with a thousand rooms and with a splendor of ornamentation not unworthy of a palace of his day.

He would have found that the college of Philadelphia, which he had founded, was now one of the great universities of the world, and in its great buildings educated each year at least fifteen thousand students gathered from every part of the world.

The library which he had started—the first of its character in the world—was now housed in two great edifices, one of them a noble replica of a Greek temple, protecting the treasures of over two hundred thousand volumes.

Remembering that he was not only the first Postmaster of Philadelphia, but, later, the first Postmaster-General of the Colonies, and recalling the little pouch of letters which a post-rider would carry from Philadelphia to the then far-distant

communities, he would marvel at the wonderful growth of the Post Office system of America.

Possibly no one in the realms of the departed could revisit the "glimpses of the moon" and see the mighty changes that Time has wrought in the noontide splendor of the nineteenth century with greater interest and satisfaction than the man whose exquisitely constructed brain had, with a vision vouchsafed to few of the children of men, anticipated so many of these developments.

Nothing would have amazed Washington and Franklin more, if on that evening of September 17th, 1787 they had seen all this future reality in a vision, than the fact that their Constitution, of which they then thought so little, had endured and survived these epoch-making changes and that a new and virile people, possessing, even in 1887, the greatest material wealth of any nation in the world, were to acclaim the Constitution with a unanimity of approval such as had probably never existed before in any nation; for it is to be noted that in all the speeches and addresses, which were made in September, 1887, in Philadelphia by the leading representatives of the nation, no doubt was expressed as to the future or that the Constitution was, as Gladstone then acclaimed it, the most perfect work ever struck off by the brain and purpose of man at a given time.

The long struggles that preceded and culminated in the Civil War had ended; the bitterness of that struggle had largely vanished from the souls of men in 1887. That war neither began with Fort Sumter nor ended with Appomattox; for nearly fifteen years later the bitterness of that contest still remained. Over ravaged fields and ruined homes and new-made graves, North and South still gazed at each other with seemingly implacable hatred, until 1876, when the Nation celebrated in Philadelphia, its historic capital, the centennial anniversary of the Declaration of Independence. When the representatives of all sections gathered in Fairmount Park on May 10, 1876, which, sprinkled with vernal flowers, was a true and nobler "Field of the Cloth of Gold," the "mystic chords of memory," to which Lincoln had alluded, again

touched their hearts, and, in the common love for the Union, the bitterness of the fratricidal conflict was forgotten. The last electoral struggle which was in any way affected by the bitterness of the Civil War was the Presidential election of 1880, when, with the abandonment of the mistaken policy of enforced reconstruction, the North and South were again united,—not by force and not merely by common economic interests,—but by a common pride and affection in a noble and heroic past.

It was under these conditions that the Centennial Anniversary of the Constitution was fittingly celebrated, and, for the first time in all of the stormy career of the new Republic, men of all sections united with generous pride and enthusiasm in acclaiming the work of the Fathers, which had made that Union possible.

Little those of us, who participated in that notable celebration in 1887, then thought that a few decades later this profound faith in the Constitution would be weakened and that millions of men would distrust its wise restraints, that organized parties would declare their hostility to some of its essential principles, and that responsible leaders of thought would be willing to tear down in a day what it had required a century to erect.

CHAPTER XXII

A RISING OR A SETTING SUN?

"Governments, like clocks, go from the motion men give them; and as governments are made and moved by men, so by them they are ruined, too. Therefore governments rather depend upon men, than men upon governments."—William Penn.

TO Franklin was not vouchsafed a vision of America in 1887. To none of the children of men is ever given such prescience. The wisest, as the least wise, can only see the future "as in a glass darkly." He could see with his unequaled vision that in 1787 it would be for America a "rising sun," but how long that sun would be ascendant in the constellation of the nations and when it would begin its inevitable declination to the flaming West of decay and death, even Franklin could foresee as little as he could envisage how resplendent that rising sun would be when it reached its zenith.

If such a vision had been vouchsafed to any one, it would have been to Franklin, for he was a worthy fellow in philosophic insight to Michael Angelo and Leonardo da Vinci, and in the Elysian fields they are his true "yoke fellows." Da Vinci could faintly appreciate that the day would come when man would ride the heavens in an aeroplane, outfly the eagle, and ascend to heights to which the eagle would never aspire, but he little appreciated that four centuries after he had passed away two Ohio boys, working in a little bicycle repair shop, would conquer the air as their fellows had already mastered the land and subdued the seas.

Franklin had at times a wonderful anticipation of the future, for he had the extraordinary prescience to see that electricity, to others an unknown manifestation of natural force, was in

itself a material substance, composed of invisible atoms, each of which contained a universe of smaller atoms which we call "electrons," whose number and power are beyond the "reaches of our souls." But, as all the children of men, his vision of the unknown was rare and imperfect. When he died he left a bequest to the city of Philadelphia with the direction that the increment should be accumulated for a century, and that at that time it was to be used, if it then seemed desirable, to bring the waters of the Wissahickon Creek to Philadelphia as a water supply. This little shallow creek is about ten miles from the centre of Philadelphia and its width varies from ten to twenty feet. This illustrates how little Franklin ever anticipated that Philadelphia would in thirteen decades become a city of two millions of people, for the present population of that city would exhaust Franklin's suggested water supply in a few minutes. Thus believing that his adopted city would not in a century have a population in excess of 50,000 people, it is clear that he had only the vaguest impressions of what would be the state of his city and his nation a century hence, if he were privileged to crawl out of his cask of Madeira and see the future America in the noon-tide of its splendor in this year of grace 1924.

It does not follow that if he again at this time revisited the earth and saw the Republic, which he had done so much to create, in its present greatness that he would not have a very keen appreciation of both its merits and demerits, for the same profound wisdom—and above all common sense—with which he considered the problems of his day would avail him equally today. No speculation could be more interesting than to conjecture what would be his judgment today as to whether the Constitution, which he had likened to the sun, was now rising or setting.

One thing is clear, he would not give an exaggerated importance to political institutions or even material achievements as such. Viewing the history of America from the time that he had joined the silent majority, he would be deeply impressed with the political changes, and especially those of the last quarter of a century. He would now realize that to

him and his illustrious associates of the Convention of 1787 had come the privilege of pregnant consequence to "turn the stream of the ages into a new channel," and that the creation of the United States as an independent nation, and its stable development through a wise and efficient government, had been one of the great events of human history. His own vision had rarely extended beyond the Alleghenies, for, unlike Washington, who was essentially a pioneer, he had given little thought to the unbroken wilderness beyond the Ohio and the Mississippi; and he would regard with the greatest satisfaction the act of his great contemporary, Thomas Jefferson, in bringing about, through the acquisition of the indeterminate "Louisiana," a continental expansion. He would rejoice that not only was the unity of the nation established by the Civil War, but that the blight of slavery had been forever removed, for the last public act of his conspicuously useful career was a protest written on his deathbed against that destructive institution. It would profoundly interest him to realize that 111 years after the adoption of the Constitution the United States had so enlarged its territorial domains that they now extended from Maine to Manila, for, like the mother empire, the sun does not set upon its flag.

Most of all, he would be profoundly impressed with the fact that when the world suffered the cataclysm of the World War and the liberal and illiberal forces of western civilization were thrown into mortal conflict, the United States proved the determining factor in that, the greatest war in the history of the world, by transporting through agencies, of which Franklin never even dreamed, almost as many soldiers to the battle line in Europe as there were people in the colonies when the Constitution was adopted. Remembering how little the colonies were in the estimate of the world when the Constitution was adopted, he would be profoundly impressed that the President of the United States, created by that Constitution and vested with its powers, had sat in a world conference as one of the four most forceful personalities of the living world and had been hailed and acclaimed as the dictator of peace.

In all history there is nothing quite so swift as this progres-

sion from weakness to power. When the author of this book was a boy of thirteen he could well have known in his native city old Horace Binney, who was 94 years of age in 1874, and who, as a boy of ten years of age, had seen Washington and Franklin conversing in front of Independence Hall. Therefore, within the space of two lives, the dependent colonies had become an independent State under Washington and Franklin, a continental State under Jefferson, a truly united State under Lincoln, and a cosmopolitan State of unequalled power and overshadowing prestige under William McKinley and Woodrow Wilson. In 1776, the little colonies appealed to the world for help; in 1924 the world appeals to America to save it from destruction. What a marvellous *bouleversément*! The living generation lives too near to these prodigious events to grasp their significance. When Caesar's legions left the Eternal City and disappeared in the forests of Gaul, neither the Roman Senate nor the people felt more than a languid interest. As Mommsen, the great historian of the Roman Empire, says:

"Centuries elapsed before men understood that Alexander had not merely erected an ephemeral kingdom in the East, but had carried Hellenism to Asia; centuries again elapsed before men understood that Cæsar had not merely conquered a new province for the Romans, but had laid the foundation for the Romanising of the West."

Similarly, time must elapse before the world fully appreciates that when the flag of the United States was planted at the very gateway of China in 1898, and when later the soldiers of America valorously traversed the bloody wilderness of the Argonne and reached the Rhine, the sun of Franklin's vision had completed the circuit of the globe and that the nation, thus created by the men of the Constitutional Convention, had become the most powerful nation of the world.

Unquestionably, Franklin would first consider the material aspects of this prodigious transformation. Remembering the time when the currency of America was so depreciated that it was derisively used as wall-paper and its bonds had shrunk to

a mere fraction of their par value, he would be amazed to know that the people of the United States today hold three-fourths of all the gold of the world. In his day and generation the entire wealth of the world was estimated at about \$100,000,000,000, today the wealth of the nation, which he had created, is estimated at nearly fourfold greater, or \$320,000,000,000. Remembering how "Father Abraham" had made it his lifelong task to preach thrift and economy to the plain people of the colonies, he would be literally astounded at the per capita wealth of every man, woman and child in the United States. Even Franklin, whom nothing seemingly amazed, would be stupefied at learning that the value of real property in the United States was \$155,000,000,000; that the assets of its manufactures, which in his day were in their infancy, were \$16,000,000,000; that railroads, of which he never dreamed, spanned the continent and represented property interests exceeding \$20,000,000,000, and that even motor vehicles, the invention of recent date, had in an incredibly short time reached a value of nearly \$5,000,000,000.

Remembering that in his day even the largest employer had very few employees, largely journeymen and apprentices, who often lived in the home of their employer, how surprised he would be to learn that a single manufacturer employs 167,000 men and manufactures each year 2,000,000 vehicles, and in ten years has paid to the Government in taxes \$147,000,000! Surely, Franklin, if he were privileged to shake hands with Henry Ford, would raise his hat to such stupendous organizing genius.

All these material developments, infinitely beyond his wildest imagining, would be as nothing to the marvels of modern inventions. How the telephone would astound him, or that greater wonder, the wireless, with which men gather out of the skies human voices, which travel simultaneously in every direction at the rate of 186,000 miles a second! Would not Franklin think that man had reached the Ultima Thule of dynamic power, when, speaking over the radio, a man can be heard simultaneously and with his own voice a thousand miles, with the added wonder that those who listen to him at that

distance hear his voice more quickly—if the human mind could split the fraction of a second—than those of his immediate audience, to whom he speaks by the ordinary waves of sound.

When all these miracles became known to Franklin, if he were to tread the streets of Philadelphia in this year of grace 1924, would he not say as Miranda in *The Tempest*:

“Oh, brave new world that hath such people in it!”

This would be, however, his first impression, but that profound and penetrating mind would soon pass to the secondary consideration as to whether this new world of inventive marvels had in fact increased or diminished the spiritual dignity of man. To Franklin the problem of civilization was always the problem of the individual man. He did not overvalue political institutions; they were but means to an end. His philosophy had always been based on the fact that the salvation of society depended upon the worth of the individual. This was the fundamental reasoning of his Poor Richard philosophy. His famous “Father Abraham” address had gathered together all those homely adages, in which the ultimate wisdom of a sane and healthy life was expressed, and which were generally based on the fact that progress depended upon what was within a man and not exterior to him, and in this he was but reiterating the saying of the great Teacher that “the kingdom of God is within you.”

To Franklin all the material conquests of man and his collective achievements would be unimportant, so far as the problem of progress is concerned, if the individual is slowly deteriorating; and if Franklin were now to consider whether his sun was rising or setting he would start with the average man and not with the form of government or the material achievements of civilization. He would ask whether with the growth of mechanical dynamic power the individual had waxed or waned, and thus he would answer the question, now confronting so many men and as fateful as that of the fabled sphinx, whether our vaunted progress is an illusion or a reality.

Franklin would ask himself these three searching questions:

1. Measured by a true sense of values, is man advancing or retrograding?
2. Do the social conditions of today result in a competent or incompetent leadership?
3. Have men a greater or a less respect for the authority of law?

As he answered these questions, he would determine whether the Constitution was to-day a "rising or a setting sun."

Has man made any true progress in this last quarter of a century? Before the World War, he who asked such a question would have raised a doubt as to his sanity, and yet the very word "progress" was almost unknown prior to the nineteenth century, the expression "civilization" is purely its creation, and thoughtful men would differ widely as to their true definitions. Prior to the World War, the dominant note of human thought was one of unbounded optimism, but when the top of civilization blew off in 1914 and man pulled himself out of the most gigantic wreckage in history, the thoughtful began to wonder whether progress could be measured solely in terms of thermodynamics.

Nor can the progress of mankind be measured merely by the greater diffusion of human comforts and the accretion of material wealth. Was it not well said by Doctor Goldsmith:

"Ill fares the land, to hastening ills a prey,
Where wealth accumulates, and men decay."

Man is no wiser, if he can talk by the radio a thousand miles instead of a hundred feet, unless he has something to say of greater value.

Science has given us sound amplifiers, but unfortunately they cannot amplify the mechanics of thinking. Better a Hamlet printed on a hand press than a Shavian banality—scintillating with wit but devoid of soul—upon a Rotary. Nor does man

progress when he travels four miles a minute through the skies, and thus outflies the eagle, unless he travels to better purpose than did our forebears, when it required at least two days to journey from New York to Philadelphia.

But how can the growth or deterioration, as the case may be, of the average man be determined? One criterion is the change for better or worse of the fundamental institutions of man, like the church, the school, the theater, and, since Gutenberg, the press. Of these, the most significant, possibly, is the press, for it can be truly said of the newspaper, as Shakespeare said of the theatre, the newspaper of his day:

"They are the abstract and brief chronicles of the time; after your death you were better have a bad epitaph than their ill report while you live."

The press is a mirror in which mankind can view itself in order to determine its own moral growth. Its shining surface retains the hot breath of a feverish age.*

* A comparison of one of the greatest newspapers in this country and indeed of the world is suggestive of an alarming change of values. The issues of the New York *Times* compared are one of 1898 and one of 1923.

The earlier issue contained 12 pages and 84 columns; the later issue 40 pages and 320 columns. The *Times* has thus quadrupled in size, and if the quantitative ideal, which now governs civilization, is the true test, the present-day *Times* is a greater newspaper. The earlier issue contained 15 columns of advertisements, or approximately one-sixth of the newspaper, the later issue contained 202 columns of advertisements, or two-thirds of the issue. The day of the full-page department store advertising had not begun in 1898, and it may well be questioned whether the immense dominance of a few full-page advertisements has added anything either to the dignity or independence of journalism.

Of the 84 columns of the earlier issue there were 32 columns, a little less than one-half, which were given to national and international politics. In the later issue these great topics are given only 18 columns, or about one-twentieth of the newspaper. In the earlier issue three topics were conspicuous by their almost complete absence: crime, humor, and athletics. One-half column was given to poetry and jokes, and one and one-half columns to sports. This allotment to athletics has grown tenfold to thirteen columns in the present day *Times*, although the earlier issue was in the season of outdoor sports and the later in the mid-winter season, when the minimum of this topic would be expected. Then, as now, the *Times* refused to lower the tone of journalism by a page of so-called "comics." Possibly, nothing better illustrates the degeneracy of taste than the fact that a quarter of a century ago men still enjoyed "Sir John Falstaff." To-day it is "Andy Gump." The two Dromios of the "Comedy of Errors" are now almost forgotten, but each day we have the monotonous banalities of "Mutt and Jeff."

The increased dominance of athletic sports in the present day is a social phenomenon to which too little attention has been paid. It is not without some justification, for as a mechanical civilization has so largely eliminated real physical labor from life there is an instinctive demand of man to prevent physical decay by finding some outlet for his physical powers. Nevertheless, its dominating interest has become a serious problem, for it indicates that the real change in the average man is in his sense of values. Such loss has been in the past the significant sign of the decay of a civilization.*

The value of athletic sports to those who actually participate in them cannot be denied, but those who are merely spectators gain nothing but amusement. In the greatest age of Greece, the Academy, where men communed upon the "true, the beautiful, and the good," and the palæstrum, where the youth of Athens wrestled and developed their physical power, were one institution. If the Athenian youth loved to wrestle, he also loved his Homer. The "homer" that the youth of today best loves is the kind that a Mr. Ruth of baseball fame contributes to the delight of an hysterical multitude. The chief amusement of today is the vaudeville show or a moving picture spectacle. The one saves concentrating attention on any one subject for three hours, the other gives the maximum of emotional impression with the minimum of thought. The Periclean had the true sense of *mens sana in corpore sano*; but the later degeneracy of Athens was measured by the love of the hippodrome, where only a few contended and tens of thousands merely gratified as spectators the primitive lust for brutality.

The press of today indubitably shows that this is the age of

*If Dempsey and Firpo had fought 25 years ago, the newspapers on the morning after the fight might have given a column to it, but to-day the modern newspaper will give whole pages to a wholly unimportant and rather brutal contest for weeks and months before the event, and for weeks thereafter. Where a few hundred people would have witnessed the prize fight, for such it was, a quarter of a century ago, a hundred thousand will to-day journey from the four ends of the earth to see Dempsey and Firpo punch each other for a few fleeting moments. What is more significant, thousands of women are now spectators, even as Roman matrons two thousand years ago turned down their thumbs upon the gladiators of the Coliseum, who were "butchered to make a Roman holiday." *Panem et circenses*—bread and the circus,—was the prelude to the fall of the Roman Empire.

the hippodrome. Even in many of the great colleges of America, where the well-born youth of our country should be trained to defend in these critical days our institutions, the classroom has been largely subordinated to the stadium.

The press disclaims responsibility for this degeneracy in our sense of values by suggesting that it simply gives the people that which interests them, but this is only a half truth; for while the newspaper must be, in the nature of the case, an "abstract and brief chronicle of the times" and must show to the spirit of the age its form and pressure, yet if the sense of values of the average man has been distorted, the press is largely responsible, for it generally creates the interest which it subsequently gratifies.*

The *Times* of twenty-five years ago restricted its columns to comparatively few topics. It gave the mind of the average man something that he could assimilate. Its allotment of space was based on the comparative importance of a few topics which it selected as news.

The later issue of the *Times* runs through the whole gamut of human life. Nothing that is human is foreign to it. Over forty-four classes of topics were treated, the predominant one being crime. A generation ago the press report of a crime indicated that it was abnormal. Today, with front pages reeking with crimes of violence, passion and peculation, the younger generation must receive the impression that crime is the norm of life.

The *Times* has been selected for purposes of comparison because no other American newspaper, and few of any country, has a higher standard of journalism, and, if its columns

*If, for example, there had never been a reference to the Dempsey-Firpo fight until the day before it took place, and then only in an obscure corner of the press, few people would have been aware even of the existence of these renowned gladiators; but the interest was systematically developed by three months of antecedent publicity until the average man, whether he liked a prize fight or not, felt a curiosity to know who would be the winner. This is excellent for Mr. Rickard, who is reputed to have made some millions in staging these spectacles, but those who believe that the age is a very critical one and that if the frail bark of our institutions is to keep afloat, all men should give attention to the affairs of government, are not so enthusiastic.

disclose a serious shifting of human values, then the portentous fact cannot be questioned.

No social institution more clearly evidences the deterioration of a mechanical civilization than the press. The Gresham law of currency, that the baser drives out the better from circulation, applies to journalism. In every American city, the success of the newspaper of base standards inevitably tends to destroy the better standards of the newspaper with higher ideals. The newspaper today is a highly commercialized institution, and its criterion of success is wholly pecuniary. It owes its news to the standardized product of The Associated Press, and, as such, it fairly answers the chief end of its existence. But, in its other columns, especially its Sunday supplements, the great objective of the modern newspapers—if only their proprietors were frank enough to acknowledge it—is to reduce their intellectual content to the mental level of the moron. If the average American newspaper were asked to select either the syndicated articles of the greatest minds of the time, on the one hand, or the monotonous banalities of the “comics,” the latter would be given the preference; for it is a known fact that the ability to print daily the ineffable silliness of *Mutt and Jeff* is of greater value than the best product of the world's greatest minds.

As an inevitable result, the mind of the present generation tends to the trivial and ephemeral, as compared with that of any previous generation, and much of the degeneracy of our political life is due to this fact.

Compare, as an illustration, the careful plan which the Constitution adopted to select a President with the political methods of today. The framers believed—and wisely, too—that the most important political duty of the American people is the selection, once in four years, of a President of the United States. They therefore believed that such an important duty should be discharged with the utmost dignity and the most profound deliberation. Hence the scheme of the Electoral College, whereby the chosen leaders of every State were, in theory, to meet in deliberation and, shutting out all extraneous

considerations or undue pressure, were to consider, with great care, such selection.

Compare this theory with the methods of a nominating convention today. Twenty thousand men and women are gathered in a great hall to witness the so-called "deliberations" of the representatives of a political party. Everything is done to give to such a convention the character of a vulgar hippodrome. A platform is carefully devised, whose purpose is to say as little as possible and to look as many different directions as there may be possible voters. When nominations are made, an hysterical speech is bawled out through the media of "amplifiers" and then follows an organized and purely mechanical demonstration, whose purpose is to suppress all past records in prolonged and meaningless noise. Men with stop-watches keep the record of the vociferous cheering, as though it were a horse race, and, upon the faintest indication that it is diminishing, all manner of circus tactics are resorted to to keep up the enthusiasm. When previous records of meaningless noise have been shattered, the vocal volume is reluctantly permitted to die down. No votes are influenced, and all that has been accomplished is a meaningless spectacle, at which the world stands in amazement. If Washington or Franklin were to visit such an assembly of either of the two historic parties of American politics, would they not gaze at each other in stupefaction and say: "Is this Bedlam, or is it America?" *

The life and death of a civilization depends upon its sense of values. By common consent, the greatest civilization ever attained by man was in the Periclean age, four centuries before Christ. The people of Athens had a true sense of values. A century later, the glory of that golden age had passed, and all

* If, having witnessed such a spectacle, they should attend one of Mr. Rickard's exhibitions of the art of self-defense, and hear the lusty shouts of joy, to which a hundred thousand men and women give expression as the redoubtable right hand of Mr. Dempsey draws blood from the mutilated face of Mr. Firpo, would they not sadly think that, although mankind has progressed for ten thousand years from the age of the cave dweller, too many of them still retain the cave dweller's primitive lust for blood, and that the hippodrome of today differs but little from the Flavian amphitheatre of Rome?

that interested the men of Athens was the latest triumph of the favorite athlete or the newest confection of the chief pastry cook. Demosthenes reproached the people of Athens by saying:

“Unmindful of your liberties, you are always gadding about after news.”

A few centuries later it was recorded in the Acts of the Apostles that the reason why the once most cultured people of antiquity would not listen to a serious talk by Paul was that “all the Athenians and strangers which were there spent their time in nothing else but either to tell or to hear some new thing.” *

Today the craving for news is such that it must not only be satisfied each day with fresh sensations, but almost each hour of the day, for the straphanger who reads his headlines on the subway awaits with expectancy, a few hours later, the first appearance of the afternoon editions. Nothing makes any lasting impression. He has the “moving picture” brain, and of such stuff a true civilization cannot be made.

In determining how far the average man has grown with the collective triumphs of man, Franklin would first turn his attention to the manual toiler. He was of that class himself. He could remember the time when he landed at Market Street wharf in Philadelphia. He had been a journeyman printer and was so proud of his craft that after he had been honored, as few men of any age have ever been honored—at least in so many ways—he took pride in writing himself down in his last testament as “Benjamin Franklin, printer of Philadelphia.” He would submit any civilization to the test of the fate of the worker, for there can be no real progress if the masses are chained to a soulless machine. In this respect, he would of course see changes of prodigious portent. In his day, each man was a master craftsman and had a real pride in his work, whose very nature was calculated to create and preserve individuality. The average man today, through the subdivision of labor, is far less capable than the Indian of the forests of

* Acts XVII: 21.

Franklin's day. The Indian can make a hut, kindle a fire, weave his own clothing, produce his own food, but today there are few of Mr. Henry Ford's 165,000 employees who, if cast upon a desert island, would know how to make a house, develop their food supplies, weave their own clothing, or even light a fire without a box of matches. In Franklin's day a man could pursue his own true and substantial happiness by developing his innate ability in harmony with his own tastes. He had little anxiety as to the future and was generally content with his own lot, modest as it was in comparison with the least fortunate man of today. In this day of a highly developed industrialism, the great mass of the people are in the never-ceasing treadmill of specialized labor, and from the anxiety, which the ill-adjusted scheme of distribution makes inevitable, there is for him no escape.

Until recent years man did not perceive this, but, as Doctor Lyer says, he is now plainly in revolt. The greatest cause of popular discontent today is the half-awakened consciousness of man that his individuality has been submerged in a complex civilization. Diogenes once said that "a man's wealth may be estimated in terms of the things which he can do without"; and, if so, poverty is more common than it ever was, for while in Franklin's day a man was content with the few indispensables of human life, today he is burdened with a thousand luxuries which he now regards as necessities, without which there can be no happiness. It is true today, as in Franklin's time, that while the taxes of the State are heavy,

"We are taxed twice as much by our idleness, three times as much by our pride and four times as much by our folly and from these taxes the Commissioner cannot ease or deliver us, by allowing an abatement."

If the Constitution were submitted tomorrow to a plebiscite, would it be accepted or rejected by the American people?

It is probable that the great Charter would be ratified by an overwhelming vote, but the motives which would impel the individual voter to reaffirm the ancient faith are not as certain as the result of the referendum.

It may be questioned whether a majority of the voters would accept anew the Constitution from any exact knowledge of its provisions. Even among the educated classes, can one man in ten pass an intelligent examination as to its contents or give any accurate definition as to its fundamental political philosophy?

Why, then, would the people, generally ignorant of the text of the Constitution and even more of its fundamental philosophy, show such a preponderating sentiment in favor of a document which few ever read and still fewer understand?

It is because the Constitution means to the average man the unity of the Republic. He knows that in some mysterious way, which he does not seek to fathom, it holds together a people who inhabit a vast continent and number over a hundred millions. Few, if any, Americans would willingly see that unity shattered. It means not only the perpetuation of heroic memories but also an economic prosperity, of which the citizen is always conscious. Since 1865 the American citizen has not permitted himself even to think of what his fate would be, if the United States were divided into two or three republics, as may conceivably some day be the case, if the Republic becomes so great as to be unworkable. Having in mind the pitiable state of Europe under present conditions, an American would look with horror upon the possibility of custom-houses on the Mississippi or the Ohio and of the portentous possibilities that would be involved, if three proud, powerful, and self-conscious nations inhabited this country and felt the constant friction of conflicting economic interests.

The average American may take scant interest in the nature of the Constitution. It is enough for him to realize that it means political and economic unity, and, as such, confers upon him as an American citizen a power, prestige and protection such as no other nation at the present time can afford its citizens.

While this profound instinct of unity does exist, it does not follow that the Constitution is safe from attack, for while *in its entirety* and as the organism of indissoluble unity it would be affirmed by the people, yet when attacked *in detail* by the

submission one by one of new amendments, foreign to its nature and destructive to its purposes, such amendments, if supported by an aggressive and well-organized minority, are too often adopted. The sense of Constitutional morality is at present at so low an ebb that the proponents of destructive amendments can control the referendum, while the opponents remained idle and inactive.

Washington had this in mind when in his Farewell Address he solemnly said:

"It is of infinite moment that you should properly estimate the immense value of your national Union to your collective and individual happiness. . . . Towards the preservation of your government, and the permanency of your present happy state, it is requisite, not only that you steadily discountenance irregular oppositions to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretexts. *One method of assault may be to effect, in the forms of the Constitution, alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown.*"

Assuming that the Constitution *as an entirety* will continue to have the support of a largely preponderating majority of the American people and that *in detail* it will not be destroyed by the gradual erosion of successive waves of innovation, the question still remains whether, in common with all democratic institutions, it can survive the present cataclysm in human society.

In an age of general education, there is no substitute for democracy. It is not probable that the people of any free nation would tolerate any other form of government. The real problem is the adaptation of democracy to the changed conditions of society.

The Constitution of the United States gave its solution to this problem, and it may be questioned whether any better solution has yet been devised by the wit of man.

Whether it is a complete solution, time alone will tell.

Great thinkers have not been wanting who have despaired of democracy as a solution for social problems. The greatest of these was Lord Macaulay, who, in a very remarkable letter to Henry S. Randall, the biographer of Thomas Jefferson, dated May 23, 1857, expressed his conviction that institutions purely democratic "*must, sooner or later, destroy liberty or civilization, or both.*" He did not believe that the United States, even with its written Constitution, would be immune from this fate, which he regarded as only deferred by the "physical cause" that its population was scattered over "a boundless extent of fertile and unoccupied land." The great Whig statesman apparently saw little salvation in the limitations of the Constitution, which he regarded as "all sail, and no anchor." *

To appreciate the weight of this remarkable and portentous prophecy, it is not necessary to give to it unqualified assent, especially in its application to the United States; for Lord Macaulay much underestimated the potent influence of the Constitution in restraining the excesses of democracy in America.

His theory that the success of the Constitution had depended in part upon the fact that the people of America were scattered over a vast area of territory and were the happy heirs to unlimited natural resources cannot be gainsaid. The candid American must admit that the fate of the Constitution—notwithstanding its surpassing wisdom—might have been altogether different, if it had been applied to a more densely populated country. The area in square miles of England is substantially that of the State of New York. The population of the former country is about thirty-five millions of people, and, of the latter State, about ten millions. If New York State had, in numbers, an equal population to that of England, it may be questioned whether the problem of self-government would be successfully solved in New York, and if

* This interesting letter, which is rarely found in the collected editions of Macaulay's works, and a supplementary letter, which has rarely been printed in any form, are of such profound interest at this time, when democratic institutions are threatened as never before, that they are reprinted in full in the Fourth Appendix to this book.

the other American States had, relatively to their areas, a similar congestion of population, the Constitution might not have survived to this day.

This, however, can only be a matter of conjecture; but it seems obvious that the success of democracy in England is due to the homogeneous character of its people and the fact that the experience of a thousand years has given to them an unusual capacity for self-government. How long democracy in England will continue, without such restraints as the American Constitution imposes, is an interesting subject for speculation.

While Lord Macaulay's pessimistic predictions have found some verification in the conditions of the European countries today, where there is a rising revolt against parliamentary government and a growing demand for the rule of a dictator, yet his political philosophy has little application to the United States, and the great essayist grossly underestimated the strength of the Constitution. The whole history of America has shown the falsity of his charge that the Constitution was "all sail, and no anchor."

It is true that when Macaulay wrote this letter, few Federal statutes had ever been nullified by the Judiciary as in violation of the Constitution, for few had been enacted; but many statutes of the States had been thus condemned, as *ultra vires*. Since then, the excesses of democracy, as illustrated by unconstitutional laws, both of State and Nation, have been repeatedly restrained by the wise limitations of the Constitution. It has proved an effective "anchor."

Nevertheless, American history has shown that Macaulay was right in his underlying suggestion that no written document could wholly restrain the excesses of democracy. Possibly the Constitution has proved more of a rudder than an anchor; for no state of human society is wholly static, and the Constitution guides, rather than holds.

The Constitution has been profoundly modified by public opinion,—which is more truly the organ of democracy than the ballot box. As a result, many of its essential principles have been, as Washington warningly predicted, insidiously

subverted, and many others are today threatened by direct attack.

Thus, the basic principle of home rule has been, to some extent, subverted by the submergence of the States.

Property rights, as guaranteed by the Fifth and Fourteenth Amendments, have been impaired by many socialistic measures. The difficulty has not been in the principles of constitutional law; but in their application to complex facts, and the ascertainment of those facts has put an impossible burden upon the Judiciary.

The system of governmental checks and balances has been destroyed by the persistent subordination, in the practical workings of the Government, of the Legislature to the Executive.

The commercial power of the Union has been utilized to attain unconstitutional ends, to the substantial destruction of the rights of the States.

The Fifteenth Amendment is, in many States, a dead letter.

The concurrent power of the Senate in the selection of diplomatic representatives and in the making of treaties has frequently been impaired by protocols, informal treaties, and other executive acts, which make a free decision of the Senate difficult, if not impossible.

Above all, the taxing system has been perverted since the Sixteenth Amendment to redistribute property. The adequate defense of the Constitution against the spirit of Socialism ended with the progressive income tax, whose excessive graded taxes often effectually confiscate the wealth of the few for the benefit of the many. It would amaze the framers of the Constitution to know that men with large incomes are obliged to pay to city, State and Nation, in some instances, nearly eighty per cent. of the income of their property; and this virtual confiscation—for it cannot be regarded as an equitably proportionate contribution to the expenses of the Government—would be even more clear, were it not that, under one of the great implications of the Constitution, the United States cannot tax the securities issued by the States and cities. This has been a “city of refuge” to the wealthy classes, who have

been enabled to invest nearly seventeen billions of dollars in forms of property, which are immune from Federal taxation, and by this expedient they not only escape the unfair confiscation incident to an unjustly disproportionate tax, but also their just and equitable contribution to the expenses of the Federal Government.

No student of our institutions can question that the Constitution is in graver danger today than at any other time in the history of America. This is due, not to any conscious hostility to the spirit or letter, but to the indifference and apathy with which the masses regard the increasing assaults upon its basic principles.

Unless the American people awaken to the necessity of defending their most priceless heritage, there is manifest danger that within the lives of those now living the form will survive the substance of the faith.

The thoughtful few, who from time to time sound this warning, are "as one crying in the wilderness." Their voices are lost in the roar of a mechanical civilization. Of the few, who seem to care, many are fatalists, who having filled their own granaries with material abundance, complacently say with Louis XV, "after me, the deluge."

CHAPTER XXIII

THE DECAY OF LEADERSHIP

"Such as are the leading men of the State, such is the State itself."—CICERO,

LORD BRYCE, in his valuable study of democracy, questioned the time-honored classification of governments, which dates back to Aristotle and Plato, into monarchies, aristocracies, and democracies. He contends that from the beginning of time there has been but one form of government, and that is the rule of the few.

If so, the vital question is as to the character of the few and the method of their selection, for the latter determines whether a government shall be classed as free or otherwise.

Whatever the form of government, it is today true of both the political and industrial life of the United States that there is an irresistible tendency to concentrate power and responsibility in a few and at times in one man. This has always been true in the history of the American nation, and it accounts for the fact that in any conflict between the Executive and Congress the sympathy of the American people is generally with the Executive. An individual as President can appeal to the imagination of the people as an impersonal and many-headed Congress cannot possibly do.

Today, the men in whom power is thus concentrated in the democracies of the world, are small in number, and also too frequently in calibre. Time was when nearly every American State had its so-called "favorite son," of whom it was proud and for whom it cherished the expectation of the highest honor of the Chief Magistracy. Today, few men have captured the imagination of the American people, and of those few many suffer by comparison with the leaders of past generations.

Today, men are mentioned for the Presidency who even a generation ago would not have been regarded as worthy of more than a subordinate place in a State. Men are seriously considered for the first place in the gift of the American people who, judging by their past records, are little more than political adventurers.

Fortunately, the ancient breed of strong men is not extinct. A Cleveland, Harding or Coolidge has the same courage, sincerity and common sense as the strong men of earlier generations, while in intellectual vigor a Roosevelt need not be undervalued to Hamilton, or in power to appeal to American idealism, need a Wilson fear comparison with Jefferson. And yet what group of leaders today can justly compare with Washington, Franklin, Hamilton, Jefferson, Madison, Wilson, Mason, and many others of the heroic age, or with Marshall, Jackson, Webster, Clay, Calhoun, Benton, John Quincy Adams, and Binney of a later age, or with Lincoln, Douglas, Seward, Sumner, Stanton, and Greeley of a more recent time?

The common explanation of this unfavorable comparison is that all men must be seen in the perspective of history.

Is the present estimate of past leaders due to the same illusion which makes a mountain seemingly rise in altitude as the traveller recedes from it?

Thomas B. Reed, a very forceful personality in his day and generation, once said that "a statesman was only a dead politician." This explanation is only a half truth, and finds its partial refutation in the fact that the great men of past eras did not lack adequate appreciation by their contemporaries.

Few things are more amazing in history than the fact that the men of the Revolution deeply impressed the whole civilized world in their own day, although the colonies then were as inconspicuous and remote a part of that civilization as New Zealand is today. A fitting analogy would be if New Zealand revolted against the Empire and suddenly developed a score of men who in a few years became world famous. Such was the achievement of the men who met at Philadelphia in the Constitutional Convention, and the whole world turned with eager attention to the result of its deliberations in a little

provincial town which did not have more than 30,000 people, and which was then more remote from the great centers of civilization than Wellington is today.

No American before or since ever caught the imagination of the world as did Franklin. His was not the short triumph of a few days, such as followed President Wilson's dramatic entrance into the councils of Europe at Versailles. For years Franklin shared with Voltaire the distinction of being the most interesting personality in the politest and proudest court of Europe, and when his death was announced by Mirabeau, the great orator of the Revolution said:

"Franklin is dead. The genius that freed America and poured a flood of light over Europe has returned to the bosom of Divinity. The sage whom two worlds claim as their own, the man for whom the history of science and the history of empires contend with each other, held without doubt a high rank in the human race. . . . Antiquity would have raised altars to this mighty genius, who, to the advantage of mankind, compassing in his mind the heavens and the earth, was able to restrain alike thunderbolts and tyrants. Europe, enlightened and free, owes at least a token of remembrance and regret to one of the greatest men who have ever been engaged in the service of philosophy and of liberty."

Nor was Franklin exceptional, and the estimate that the world in the closing years of the eighteenth century placed upon the leaders of the American revolt can be measured by the lofty estimate of their abilities by the greatest genius of the British Empire, the elder Chatham, who, speaking of the First Continental Congress, said:

"I must declare and avow that in all my reading and study, and I have read Thucydides and have studied and admired the master States of the world, that for solidity of reason, force of sagacity and wisdom of conclusion, under such a complication of circumstances, no nation or body of men can stand in preference to the general Congress at Philadelphia."

It may be suggested that such an estimate of living leaders by their contemporaries is not to be expected in the age of unlimited printing, where impressions are more transitory and scattered, but the great men of the Victorian age were also giants to their contemporaries. Emerson, Carlyle, Ruskin, Matthew Arnold, Herbert Spencer, Huxley, Darwin, Bismarck, Disraeli, Gladstone, Cavour, Richard Wagner, von Moltke, Gambetta, Lincoln, Renan, Pasteur, did not lack the recognition of their own time, and some of them were greater to their contemporaries than they are to posterity.

Whatever the cause, it seems clear that the present age is not productive of a political leadership comparable with the past, and, unhappily, in none of the free countries of the world is this barrenness so apparent as in the United States.

Has the American Republic today a leadership worthy of its past or adequate to its future? That is a serious question, and can well be termed one of the great criteria, if not the truest criterion, of the success or failure of our institutions. As Carlyle said:

“Certainly, this is a fearful business; that of having your able man to seek, and not knowing in what manner to proceed about it. That is the world’s sad predicament. We need the man of intellect at the top of affairs; this is the aim of all constitutions and revolutions, if they have any aim; for the man of true intellect is the noble-hearted man withal; the true, just, humane, and valiant man. Get him for a leader, all is got; fail to get him, though you had constitutions, plentifully as blackberries, and a Parliament in every village, there is nothing yet got; we shall either learn to know our true leaders and statesmen somewhat better when we see them, or else go on to be forever governed by the unheroic. Had we ballot boxes, clattering at every street corner, there were no remedy in these!”

Democracy is an institution which is tempered by wise and noble leadership, and in the case of America by constitutional limitations upon the powers of the masses. This is especially true of the American Republic, for its basic principle is repre-

sentative government, and that ideal of government must depend upon the ability of the American people to produce adequate leadership. If it fail in that, it has altogether failed, for the mere momentum of the mass cannot insure safety. As well might a great army pursue a successful campaign if it lacked a great general.

In his classic commentary upon the American Commonwealth, Lord Bryce said:

"The proportion of men of intellect and social eminence who enter public life is much smaller in America than in each of the free countries of Europe."

Is not this as true today as when the *American Commonwealth* was written more than thirty-six years ago? If true then, it is increasingly true today, for few Americans would question the fact that the quality of leadership in the public life of America has steadily deteriorated in that period, although its need was never greater. Rarely, if ever before, has there been such poverty of material from which to select public officials.

If this be the fact, it is one of alarming portent. If a fact, is it attributable to the nature of our institutions or to social conditions which the Constitution cannot influence?

Of greater moment is the question how far the decay in leadership is attributable to deterioration in character of the individual man?

Lord Bryce suggests a number of reasons for the comparative absence in America of leadership in political affairs.

He attributes it, in the first place, to the absence in this country of a social and political capital.

The founders of the Republic had a puerile fear of a large city, but in their day it had some justification in the experience of the past. They were not willing to place the capital of the nation in any one of the comparatively large cities, absurdly small as the largest of them was in their day. They located the capital in what was then little more than a marshy swamp on the banks of the Potomac. Its inauspicious beginning has not

prevented it from becoming one of the most beautiful capitals in the world. Still it is merely a political capital, and in no sense a commercial or social metropolis.

With the dispersion of the American people through their vast continent a metropolis in the truest sense of the word is impossible. No city occupies the same relation to America as does London to England, Paris to France, or Rome to Italy. The country is divided into social and economic zones, each of which has its metropolis, but no city has such an overshadowing importance in America, towards which the aspiring youth gravitates as the flings toward a magnet, in the same sense that the ambition of every young Englishman is to go to London and that of every young Frenchman is to go to Paris. The absence of this incentive towards the concentration of available material for public service is a contributory cause, although a minor one, to the evil.

Lord Bryce then suggests the absence in this country of a hereditary class of public officials. By this he apparently does not mean the transmission of titles from fathers to sons, which perpetuates official dignities and permanently attaches great families to the public service, but presumably refers to the fact that with many English families public service is a tradition and it is thus recruited from the great patriciate of England from generation to generation.

It must be confessed that in England a value is set upon public service that is not recognized in the United States. Not only does the son of a distinguished public official regard it as not only a privilege, but an hereditary duty to follow in his father's footsteps, but with a truer sense of the values of human life the educated Englishman feels that when he has amassed a financial competence it is both his duty and his privilege to abandon mere money getting and devote his life to the public service. Unquestionably, he is largely influenced in this course by the elaborate system of social caste which more profoundly influences England than its so-called constitution. The complex system of social dignities, which nominally the Crown but actually the government confers upon men who have rendered some special service to the state, all tend to de-

velop in a high degree their participation in the public life of the nation. Each Englishman believes that if he renders some special service to the state, whether it be as a steel manufacturer, a brewer, a poet, a violinist, a soldier, a sailor, an actor, or dramatic author, that he may one day be found among those to whom "birthday honors" are accorded; and this keen incentive is not exhausted by mere knighthood, for the social system of England provides an endless succession of rungs on the social ladder, and an Englishman, no matter how high he climbs, still has an incentive for further service. When a public man, like Curzon, has become successively Knight, Baronet, Viscount, Earl, and Marquis, he yet sees beyond him the possibility of being created a Duke.

To Americans, these titles seem like the antiquated mummeries of a past age, and we reject the system in the belief that it creates the spirit of caste snobbery, which Thackeray so forcefully assailed with his caustic pen. Americans are apt to overlook the fact that the same love of resounding titles, as an incentive to successful effort, is not lacking in the land of theoretical equality. Even the *Almanach de Gotha* has no more imposing and grandiloquent titles than those conferred by secret societies in America upon those of their number who have won distinction. Apparently, the chief officials of these secret fraternities take as much delight in their names and insignia, generally the creation of yesterday, as an English Marquis or Duke would in a title that may date back to William the Conqueror.

While this is true of the social life of the American people, in its political life such verbal distinctions have no place, not because the Constitution forbids them, but because they could not survive the spirit of ridicule which is so characteristic of America.

While the United States has no need of mediæval titles, yet it would be an incentive to public service if some form of recognition were provided by our laws, such as the Legion of Honor of France. If an American tribunal could be constituted, and kept free from politics, to confer upon any American who had rendered exceptional service in any field of activity national

recognition, a natural desire for public recognition in other ways than by the dollar mark could be gratified.

America does not lack the raw material of such leadership. It may be questioned whether any nation contains a more resourceful, masterful, and virile citizenship, but these great qualities, which could readily produce a breed of statesmen worthy of any other nation in the world, are largely diverted to the development of our material resources, the incentive being, not the attainment of social honor, but the mere multiplication of money.

Lord Bryce then suggests that the governmental institutions of England and France give a greater opportunity to public service than America. Unquestionably, our institutions, with their tendency towards localization, do not make for national leadership. For example, in England a man can run for Parliament in any district. Even if defeated in one district he may stand for another seat, but in America a man cannot run for Congress, unless he is a citizen of the State in which he is situated; and while in theory, if a Pennsylvanian, he can be a candidate for any Congressional district of that populous commonwealth, yet in actual practice—because the habits of a people are almost as much a part of its constitution as the written law—the opportunity to serve the nation in the halls of Congress is dependent upon the consent of the district of his residence. Apart from this tendency towards localization, due to our dual system of government, is the additional consideration that America is so great that of necessity it divides itself into a number of spheres of influence, which, in turn, are largely determined by the mechanics of publicity. A citizen of Chicago may have great ability, and his ability may be sufficient to command space for his utterances and doings in the leading papers of Chicago, but he cannot be known beyond the zone of influence of those papers unless he can get to the capital of the nation and assume an importance which will make it impossible for the Associated Press to ignore him. Few, in the nature of the case, can reach Washington, and unless they do, they are “cribbed, cabined, and confined” by the limited influence of the local press. A man may have an excellent press in

New York City and be wholly unknown in California. Let a man in London in any way make his mark and his name becomes a household one throughout Great Britain, and indeed the British Empire.

Lord Bryce's fourth reason is that politics is more interesting in European countries than it is in America. This may have been so when the *American Commonwealth* was first written, in the year 1888. As long as America occupied its "distant and detached" relation to the rest of the world and in its international relations pursued a policy erroneously characterized as that of "isolation," its politics were largely restricted to the problems of purely domestic concern; and while the development of the American commonwealth in itself afforded many problems of increasing interest—as, for example, the solution of the problem of slavery—yet, for the most part, the political issues were of an economic character and had no great appeal to the imagination.

Since 1898 this situation has wholly changed. When America became an oriental as well as an occidental power, and when by the development of international commerce and its majestic growth as a nation it became inextricably intermingled in world questions, the reproach that our politics were dull as compared with questions of European politics ceased to have any force.

At no time in its history could political issues have such surpassing interest to every intelligent American as today. He is blind who cannot see that America will soon be, if it is not already, the most powerful nation in the world and will occupy a position in civilization not dissimilar from that of the Roman Empire at the beginning of the Christian era. Foreign publicists perceived this long before our own citizens. Green, the historian of the English people, predicted a generation ago that the future destinies of the English-speaking race would be dictated from the Hudson and the Mississippi rather than from the Thames, and he might have added without exaggeration that the future destinies of civilization itself would one day be more largely influenced from the Potomac than from the Tiber, the Thames, the Seine, and the Danube. A former

Prime Minister of England, and today one of its most scholarly statesmen, Lord Rosebery, said during the World War, that the centre of political gravity had by a sublime transference been shifted from the old world to the new. It is no longer a question of America's unequalled power, but only of the use which the United States will make of it. The responsible leaders of thought in America today can look with the same natural interest upon the shifting changes of the modern world as did the members of the Roman Senate two thousand years ago.

Such a condition would seem not only to call for the highest character of leadership, but also to invite such leadership by the necessity of a situation of which the Founders of the Republic never dreamed. Lord Bryce could say a generation ago that our problems were by comparison dull with the great questions of the European balance of power. In 1888, when the *American Commonwealth* was written, the sectional problem, which had grown out of the slavery question and the passions of the Civil War, had been almost wholly eliminated, and the only question that then interested the American people was the comparatively arid one as to whether a tariff should be highly or only moderately protective, and yet the people at that time took an interest in the political controversies of the time which far transcends the interest in world problems today. In the Harrison-Cleveland campaign there were nearly ten thousand political clubs, many of them having a large marching organization, and nearly all of them devoted to militant advocacy of their respective political beliefs. Today, it may be questioned whether in the true sense of the word there are one hundred political clubs in the United States.

This might be explained upon the theory that it merely marks a change of political methods, but recent election results disclose the portentous and increasing lack of interest of a majority of the electorate in the momentous problems of the hour. Thus, the census of the year 1920 discloses fifty-four millions of possible electors. In that year at a presidential election, when a man was to be selected as Chief Magistrate who could be potentially the most powerful statesman in the world,

only twenty-six millions voted; and in the following election of 1922, when the people elected a new Congress, this number had shrunk to about twenty millions. In New York only 49% of the electorate voted; in Pennsylvania 33%; in California 47%, and in Maryland 37%. In a recent and important congressional election only 17% of the electorate cared to exercise the right of franchise.

It is a striking fact that this nation, theoretically based on the principle of majority rule, is now controlled, so far as election statistics indicate, by minorities, for it may be questioned whether any member of the Senate has been recently selected, for whom a majority of the possible electorate voted.

This decay of interest is also evidenced by the indisposition of the American people to hear many of their leaders of thought even discuss political issues. It may be questioned whether there are ten men in the United States who, unaided by a political organization, could fill a large hall in any American city to discuss the issues of the hour.

A common explanation of this phenomenon is that it simply manifests a change of method from the spoken word to the printed word, but the latter can as little supplant the power of personality in the spoken word as a chromo can an oil painting. Unquestionably, the greater facility of the printing press has lessened the necessity of the spoken word, but to say that the passing of the orator is explained by the increasing importance of the editor is only a half truth.

Journalism has witnessed the same decay of leadership as the public platform. Even a generation ago the country awaited with bated breath the verdict upon the presidential nominees of certain great papers, like the *Springfield Republican*, the *Times*, the *World*, *Sun* and *Tribune* of New York, the *Ledger* of Philadelphia, and other independent newspapers of the same class. When Bowles of the *Springfield Republican*, Greeley of the *Tribune*, Dana of the *Sun*, Raymond of the *Times*, had spoken the effect was instantaneous and profound. Today, this influence is largely spent, and repeatedly in recent years an unworthy candidate has been elected to the

Chief Magistracy of some city in the teeth of the unanimous opposition of the local press.

This cannot be explained on the theory that the great newspapers of today have less capable men in their editorial rooms.

They not only have a wider clientele, but it may be questioned whether their editorials at any time were abler or more scholarly. The difficulty is not with the editors, but partly with journalism as a commercialized institution, and principally with the changing character of the readers. Standardization has wrought its deadly work, and there is as little variety in the newspaper press of today as there is in a standardized brand of a commercial product. The newspaper reader has perceptibly changed. The day of the great editor has passed because the average man today does not remember what he read yesterday. So far as he is influenced by the daily press, it is through the headlines of the news columns.

That the decay both of the spoken and the printed word is due to the lessened receptive character of the average man can be shown by another significant fact.

Time was when the utterances of a statesman were examined with the most meticulous care, and political fortunes rose and fell upon the nice shading of expressions. Webster's great career ended in an eclipse when he made one speech with its cautious gestures toward the slave-holding interests of the South. North of Mason and Dixon's Line his moral influence had ended. Lincoln profoundly impressed the entire nation with a single statement that it could not continue to exist "half slave and half free."

Three decades later, a candidate for President defeated himself by the chance expression that "the tariff was a local issue," which covered him with ridicule and blasted his political hopes.

James G. Blaine lost a Presidential election, not by anything that he said, but because he failed to resent a chance, but fateful, alliteration of a too zealous supporter.

A generation ago men spoke rarely and only after the most careful deliberation, and their words were examined with microscopic nicety.

In recent years, this meticulous attention to declarations of

policies has largely passed away. Leaders of public thought have given utterance to beliefs and policies which would have damned any public man a generation ago. Apparently, the worst folly, to which any public man can give expression, makes only a passing impression upon the public mind. What he says today for the moment interests the average citizen, but what he said a year ago is of slight consequence.

It is to this indifference of the masses to the public utterances of their leaders, whether in politics or journalism, that the decay of leadership is largely attributable. Great leaders are the product of great generations of men. They can be produced in no other way. It was not Napoleon that created the Grand Army, but the Grand Army that created Napoleon. An age which has no continuity of thought, that lives in the day, is oblivious of yesterday, and indifferent to the morrow, cannot produce great men any more than a thistle could produce figs.

This portentous phenomenon of an increasing deterioration in leadership can be best explained by the shifting values of human life. A nation that erects more garages than school houses, and more moving picture halls than churches naturally takes scant interest in the discussion of public issues. The New York City Library recently recorded the fact that in the preceding year 400,000 less volumes were borrowed for home reading than in previous years. It is the day of the ephemeral page and the cheap magazine, and the intense interest, with which the American people once followed the debates of Webster, Clay and Calhoun and intelligently discussed at every crossroads and every fireside the great questions of party politics, has vanished. It is not, as Lord Bryce suggested, the absence of questions of absorbing interest.

Lord Bryce next suggested a reason of greater force and one that should be of profound importance in any estimate of the value of our institutions. He attributes the superior leadership of the free European nations, whether measured quantitatively or qualitatively, to the vital necessity of the property classes to defend themselves from confiscatory legislation. In the democracies of Europe, the greatest of which is England,

there are no limitations upon the power of their legislative assemblies. It is always in the power of the majority to redistribute property by confiscation, and the growth of material wealth and the ever-widening gulf between the rich and the poor predispose to socialistic measures. Lord Rosebery once said to the author of this book that had there been no European war the taxing measures of Lloyd George would have destroyed the English patriciate within thirty years and the World War had greatly accelerated the work of destruction. Confiscation need not be direct to be thorough. The taxing system of any government affords an easy and effective method of redistributing property, and here or elsewhere the possibilities in this respect are not neglected and men of property go into public life from the sheer necessity of protecting their own possessions from undue spoliation.

The same danger exists in this country, but is not so readily appreciated. For more than a century the property classes of America have looked to the Constitution as the city of refuge to which they could flee.

As a sanctuary against confiscation it has only been partly successful, and the undue reliance upon constitutional limitations has not only thrown men of property off their guard, but has so lessened the spirit of constitutional morality among the people that socialistic legislation has grown with amazing rapidity. In England, men who have a property stake in the community know that if Parliament once passes a law, however unjust and oppressive, it is enforced and there is no possible remedy except an appeal to the people. In America, many unjust and oppressive laws are freely passed and legislators reconcile their injustice to their consciences by the belief that if a law is unduly oppressive the judicial department of the Government will nullify it. Unfortunately, the courts have not plenary power in this respect, and the remedy of constitutional limitations is only partly effective. When the American people, who from the manual toiler, enjoying the highest wages of the world, to the multimillionaire are all capitalists in different degree, realize this, a demand may one day arise for intelligent and courageous leadership. The Con-

stitution itself resulted from this necessity of self-preservation. It was formulated by a Convention, whose members were men of property and whose main purpose was to defend their property rights from the excesses of democracy.

Mr. Bryce next suggests that our dual system of government is not fruitful in producing great leaders, and there is some force in the suggestion, due to the same spirit of localization which has been elsewhere discussed. Many will take a great interest in the National Government and wholly neglect the State and city governments, although the latter ought to be the primary school of statesmanship. Others will take an exclusive interest in their city and State governments and be wholly indifferent to the central government.

Mr. Bryce next suggests that the failure of so many Americans to take an interest in public affairs and the consequent lack of leadership is due to their preoccupation in the material development of the country. This undoubtedly is a great cause of the evil. America is a nation of vast undeveloped resources, and it is not unnatural that in its progressive development the great majority of able men have satisfied their aspirations for achievement in some special line of work in the development of the giant industries of America. This has withdrawn from public life the richest material for adequate statesmanship. America does not lack able men. It may be questioned whether any nation has abler, but those, who by natural endowment and acquired characteristics could become the great leaders of public thought, are better satisfied to devote their energies to the great problems of industrial development. Here, again, America is unfortunate in that its leading men do not regard participation in public affairs, except as it affects their private interests, as a duty. A Congress composed of the industrial leaders of America would not lack strength, and if the same genius that has created the great financial institutions, transportation companies, and manufacturing industries had been applied to public affairs in the spirit of unselfish consecration to public service there would be little reason to complain of lack of leadership.

A final reason is suggested by Mr. Bryce, which, while true,

it is humiliating to state. He thinks that in America more than in any other democracy the liability of the public man to unjust attack deters many from entering public life. He suggests that if the paths to Congress were cleared of the "stumbling blocks and dirt heaps" there would be a great change in the personnel of the public service of America. This book goes to press at a time when there are in Washington fifteen simultaneous investigations of the characters of public men, and many have been condemned upon testimony that would never be received in a court of justice, and if received, would not be sufficient to convict even a professional criminal. As long as the great industries of America offer to the self-respecting man abundant opportunity for the exercise of his energies, many a man will ask himself why he should, except from imperative duty, go into public life, where his reputation can be destroyed without even a day in court worthy of the name. Many proud and self-respecting men have a great deal of sympathy with Shakespeare's Coriolanus, who, in standing for the consulship, was disinclined to show his wounds in the market place, and many an American, who could be of great service to the nation, is deterred by the consideration that he may quickly and unjustly find himself the subject of a personal attack and obliged to defend his integrity. To many this is too great a price to pay for participation in the public service.

To Mr. Bryce's explanations of a serious phenomenon could be added others to which he does not refer. The greatest of these is the decay of the representative principle. As previously shown, the purpose of the Constitution was to create a representative democracy. None other was contemplated by its framers. They did not believe in a direct democracy, whose elective representatives are the mere organ through which the assumed wishes of the people are carried into effect. They had good reason to believe that the true representative should be one who would exercise his own judgment, for they well knew that no Constitution would have been possible, if each member of the Convention had simply expressed the views which by some process of guess work he believed a majority of his constituents favored. They well knew that the Con-

stitution became a possibility, when the fifty-five delegates met in secret session and each decided, to the best of his mind and conscience, what was for the common welfare.

In the great debate in the English Parliament, which precipitated the English Reform Bill of 1833, this distinction between a representative and a delegate was thus expressed by Sir Robert Inglis:

"This house is not a collection of deputies as the States-General of Holland and as the assemblies in some other continental countries are. We are not sent here day by day to represent the opinions of our constituents. Their legal rights, their municipal privileges we are bound to protect. Their general interests we are bound to consult at all times, but not their will, unless it shall coincide with our own deliberate sense of right." *

Such was the theory of democracy of those who framed the Constitution, but with the political revolution of 1800 an entirely new ideal of democracy impressed itself upon the American people, and has profoundly influenced their political

* The same thought was even better expressed by Edmund Burke in his great address to the Sheriffs of Bristol:

"Gentlemen, we must not be peevish with those who serve the people. For none will serve us whilst there is a Court to serve, but those who are of a nice and jealous honour. They who think everything, in comparison of that honour, to be dust and ashes, will not bear to have it soiled and impaired by those for whose sake they make a thousand sacrifices to preserve it immaculate and whole. We shall either drive such men from the public stage, or we shall send them to the court for protection; where, if they must sacrifice their reputation, they will at least secure their interest. Depend upon it, that the lovers of freedom will be free. None will violate their conscience to please us, in order afterwards to discharge that conscience, which they have violated, by doing us faithful and affectionate service. If we degrade and deprave their minds by servility, it will be absurd to expect, that they who are creeping and abject towards us, will ever be bold and incorruptible assertors of our freedom, against the most seducing and the most formidable of all powers. No! human nature is not so formed; nor shall we improve the faculties or better the morals of public men, by our possession of the most infallible receipt in the world for making cheats and hypocrites.

Let me say with plainness, I who am no longer in a public character, that if by a fair, by an indulgent, by a gentlemanly behaviour to our representatives, we do not give confidence to their minds, and a liberal scope to their understandings; if we do not permit our members to act upon a *very* enlarged view of things; we shall at length

development to this day. It was, in its last analysis, the theory of a direct democracy. What the people wanted the people were to have, and their representative had only one duty, and that was to ascertain the views of his constituents and carry them into effect. This would be a tolerable theory of democracy, if the constituents were agreed upon any course with practical unanimity, for if substantially all of a representative's constituents favored a certain course he could naturally assume, even though he differed from them, that so many must be right and he must be wrong.

In the practical workings of democracy there is no such unanimity.

This theory of democracy might even be justified if a representative could know clearly and indubitably that a preponderating majority of his constituents after due consideration favored a given policy, for if he executed their will he could at least justify himself on the Jeffersonian theory that it was safer for him to accept the will of the majority than the will of a minority, even if his own view coincided with the latter.

In the practical workings of our democracy, with less than half of the electorate voting, it is quite impossible for the representative today, if he desires to abdicate the judicial function of his duties, to know with any certainty what the majority of his constituents favor. A substantial and vociferous minority may, and generally does, carry an election when a majority is apathetic or unwilling to vote. For this reason the representative today not only must surrender his judgment to the supposed judgment of a majority of his constituents and become their mere phonograph, but he must frequently accept the judgment of a minority only, who, if their wishes are ignored, can drive him from public life.

infallibly degrade our national representation into a confused and scuffling bustle of local agency. When the popular member is narrowed in his ideas, and rendered timid in his proceedings, the service of the crown will be the sole nursery of statesmen. Among the frolics of the Court, it may at length take that of attending to its business. Then the monopoly of mental power will be added to the power of all other kinds it possesses. On the side of the people there will be nothing but impotence; for ignorance is impotence; narrowness of mind is impotence; timidity is itself impotence, and makes all other qualities that go along with it, impotent and useless."

To this degeneration of the democratic dogma the direct primary has greatly added. The representative of today must twice stand for public office, once in the primary and once at the general election. If his party has normally 51% of the electorate registered as its partizans, 26% of the entire electorate can defeat his renomination. Therefore, the representative today, if he is to continue in public life, must give even greater consideration to the active minority than to a passive majority; and with so many blackmailing minorities, composed of various classes, blocs and interests, it is surprising that even as many self-respecting men as are still in public life are willing to subject themselves to a burdensome and most humiliating ordeal.

This degeneration of the representative principle accounts more largely for the decay of leadership than all the causes to which Lord Bryce refers.

Finally, it may be suggested that great men are the products of simple conditions and simple ideas. This complex age has, as its inevitable tendency, the standardization of human life into the common mold of mediocrity. The specialization of human endeavor is fatal to leadership in art, music, politics, literature, or in any of the higher activities of life. If the loss of leadership were only due to the filling in of the valleys of human life and the consequent lessening of the seeming altitude of the mountains there might be less reason for anxiety, but its true cause is the steady degeneracy of the democratic dogma.

This is not the fault of the Constitution, for it upheld the true democratic ideal of the abolition of privilege, of equal opportunity for all, and of the career open to talent. It proclaimed the true equality of man, so far as human institutions prescribe the rule of the race, but in guaranteeing that each man should pursue his own true and substantial happiness it proclaimed the true democratic ideal of a right to be unequal, meaning thereby the right of every man to have the benefit of his superior ability and energy.

The false ideal of democracy which obsessed the nineteenth century has borne its Dead Sea fruit, for nothing is more

clear than the world-wide reaction against a democracy that sought to level mankind down to the plane of the unworthy. Under present democratic conventions there is no real desire for leadership, for the essence of such desire is to create intellectual and moral leaders who are above the average of mankind. As there is now no demand for such a type of leadership, men thus equipped for such leadership find an outlet for their talents in nongovernmental civic activities, like industrial undertakings, where there is no tendency to degrade the leaders to the plane of the undeserving.

Throughout the world a reaction is growing against the reign of mediocrity, and like all reactions it verges to the opposite and equally indefensible extreme of one man power. What in modern history is more striking than the fact that in three of the most ancient empires of the world—Russia, Italy and Spain—the masses, weary with misrule, have willingly acquiesced in a dictator?

Nothing is so foreign to the spirit of the American Constitution as the rule of the dictator, but there would today be no demand in so many civilized countries for the abolition of parliamentary government and the substitution of a dictator, if these nations had been true to the theory of a representative democracy, still the basic ideal of the Constitution of the United States.

This is not cheerful reading. It does not feed that unlimited and invincible optimism which is at once the strength and weakness of the American character. If the makers of the Constitution had been cheerful optimists of the *Mark Tapley* variety, they never would have sensed the perils of the situation, and there would have been no Constitution of the United States. They united with a healthy pessimism an invincible courage,—and their successors may well imitate them in this respect.

Intoxicated by materialistic prosperity, the average American does not realize the peril to his institutions which now exists. One day, the American people will rouse themselves “as a strong man after his sleep”—to use Milton’s phrase—and, when thus awakened, they are seemingly equal to any task.

When the task of regeneration begins, it will not require any substantial alteration in the Constitution. It need not change the crossing of a "t" or the dotting of an "i." All that will be needed will be to develop our institutions in accordance with the spirit of the Constitution. Nothing more is necessary than a resolute attempt to elect the best men to office, and then to give them a generous discretion to do what is best for the common weal. That is the spirit of representative government,—and it was in that spirit that the Constitution was framed.

CHAPTER XXIV

THE REVOLT AGAINST AUTHORITY

*"Laws for all faults,
But faults so countenanced that the strong statutes
Stand like the forfeits in a barber's shop
As much in mock as mark."*

—Shakespeare.

IN the summer of 1816 Byron, Shelley and his family, were spending the summer in Switzerland. Their holiday was marred by incessant rain and gloomy weather. To relieve the monotony of the evenings, when the howling of the storm did not predispose to social joyousness, they agreed that each should try his hand at a ghost story for their mutual entertainment. Mrs. Shelley's contribution was a weird story of a scientist, who had discovered a method of creating a monster in human form, to which he had given a low form of animal life. The name of the monster was "Frankenstein," and this chance story, written for the entertainment of a few, has become a classic and has given a new word to the English language.

A few years later, another young poet was an undergraduate at Cambridge. His name was Alfred Tennyson. Among his friends was John Kemble, a brother of the famous actress. Watt's invention had just been applied to land transportation, and the first railroad was then being operated from Manchester to Liverpool. Tennyson narrates in his diary that John Kemble then predicted that a new era, in which mechanical power was to be the dominant force, was about to begin and that it would ultimately destroy the spiritual element in man's nature.

This remarkable prophecy was unnecessarily pessimistic and,

at best, contained only a half truth; but as the decades of the nineteenth century rapidly passed by and man became increasingly absorbed in the development of thermodynamics it became apparent to a few farsighted men that a mechanical civilization would not be without a profound and baleful influence upon human character.

Since the great war this conviction has been increasingly impressed upon the minds of thoughtful men, and, as a result, the best contemporary thought is tinged with a pessimism that is in marked contrast to the unbounded optimism which preceded the great cataclysm of the World War.

Thoughtful men are now increasingly perceiving that man is sharing the fate of the hapless inventor, who had constructed for his wooden leg a motor, but when he attempted to co-ordinate the leg of flesh and blood, with its human mechanism, with the wooden leg he incontinently fell upon his face. The same lack of coördination between the human spirit, as it has existed for thousands of years, and the magnified power of mechanics will go far to explain the present collapse in civilization.

Of all the phenomena which have resulted from the age of the machine, the most striking is the revolt against authority, and by authority is meant not only the laws of the State, which are the least important, but the great laws of social life and the conventions and traditions of the past.

According to the accepted version, Solomon said: "Where there is no vision, the people perish," but a more ancient translation of the original Hebrew suggests a more striking truth, for the Semitic sage literally said: "Where there is no vision, the people *cast off restraint*."

No one can deny that there is today a revolt against the discipline of law and the wise restraints of human conventions such as has not existed within the memory of living man.*

* In every country there has been an unprecedented growth of cases in the criminal courts. In the Federal Courts of the United States, notwithstanding their very limited jurisdiction, the criminal indictments have increased from 9503 in the year 1912 to over eighty thousand in the year 1923. This should give less concern if it were the fact, as commonly supposed, that the increase is wholly due to a class of crimes which are *mala prohibita* rather than *mala in se*. Unquestionably, sumptuary laws

The reign of lawlessness has crept over the world like the huge shadow of an eclipse, but too few have realised the portentous change that has come over civilization.

Formerly, the crimes of a highwayman, a burglar, or a murderer were so rare that they were naturally regarded as a marked abnormality of life. Today, they are commonplaces in the large cities of the United States, as the newspaper press, whose columns fairly reek with such violations of law, too plainly evidence. A generation ago a citizen could freely walk the streets, except possibly in some remote mining camp, without any reasonable anticipation of violence; but today the cities, which have the oldest tradition of law and order, have become as much the field of operations for the footpad and the highwayman as in the eighteenth century. The days of Dick Turpin and Jack Sheppard have returned, and hardly a day passes in any of the larger American cities that many crimes of violence do not occur. All students of crime know that this increase is partly due to the automobile and the automatic pistol. The former has facilitated the criminal in an unperceived approach and a quick escape, and the latter has made him far more dangerous than the highwayman of the eighteenth century.*

As to the subtler and more insidious crimes against the political state, it is enough to say that graft has become a science in city, state and nation. Losses by such misapplica-

account for a substantial part of the increase. The increase, however, is as observable in crimes of violence and passion and pecuniary dishonesty as in the case of sumptuary laws. Casualty companies report that the losses that they have paid for burglary alone have grown from \$886,000 in 1914 to over \$10,000,000 in 1920, and such insured losses are only a small part of the heavy losses due to robbery and burglary.

*"Thus in Chicago alone, 5000 automobiles were stolen in a single year. Once murder was an infrequent and abnormal crime. To-day in our large cities it is of almost daily occurrence. In New York, in 1917, there were 236 murders and only 67 convictions; in 1918, 221, and 77 convictions; in Chicago, in 1919 there were 336, and 44 convictions.

When the crime wave was at its height a year ago, the police authorities in more than one American city confessed their impotence to impose effective restraints. Life and property had seemingly become almost as insecure as during the Middle Ages. Apart from crime the toll of death of a mechanical civilization daily becomes greater. Last year the death toll of the automobile in the United States exceeded 17,000, and the unnumbered casualties were equivalent to the wounded of great battles.

tion of public funds—piled Pelion on Ossa—no longer run in the millions but the hundreds of millions. Many American city governments are foul cancers on the body politic. To boast of having solved the problem of local self-government is as fatuous as for a strong man to exult in his health when his body is covered with running sores. It has been estimated that the annual profits from violations of the prohibition laws have reached \$300,000,000. Men who thus violate these laws for sordid gain are not likely to obey other laws, and the respect for law among all classes steadily diminishes as the people become familiar with, and tolerant to, wholesale criminality. Whether the moral and economic results of Prohibition overbalance this rising wave of crime, time will tell.

This spirit of revolt against authority is not confined to the political state, and its causes lie beyond that sphere of human action.

Human life is governed by all manner of man-made laws—laws of art, of social intercourse, of literature, music, business—all evolved by custom and imposed by the collective will of society. Here is found the same revolt against tradition and authority.

In music, its fundamental canons have been thrown aside and discord has been substituted for harmony as its ideal. Its culmination—jazz—is a musical crime. If the forms of dancing and music are symptomatic of an age, what shall be said of the universal craze to indulge in crude and clumsy dancing to the syncopated discords of so-called “jazz” music? The cry of the time is: “On with the dance, let joy be” unrefined.

In the plastic arts, the laws of form and the criteria of beauty have been swept aside by the futurists, cubists, vortacists, tactilists, and other æsthetic Bolsheviks.

In poetry, where beauty or rhythm, melody of sound and nobility of thought were once regarded as the true tests, we now have in freak forms of poetry the exaltation of the grotesque and brutal. Hundreds of poets are feebly echoing the “barbaric yawp” of Walt Whitman, without the redeeming merit of his occasional sublimity of thought.

In commerce, the revolt is against the purity of standards and the integrity of business morals. Who can question that this is pre-eminently the age of the sham and the counterfeit? Science is prostituted to deceive the public by cloaking the increasing deterioration in quality of merchandise. The blatant medium of advertising has become so mendacious as to defeat its own purpose.

In the greater sphere of social life is the same revolt against the institutions which have the sanction of the past. Social laws, which once marked the decent restraints of print, speech and dress, have in recent decades been increasingly disregarded. The very foundations of the great and primitive institutions of mankind—like the family, the Church, and the State—have been shaken. The great loyalties of life are “more honored in the breach than the observance.”

All these are but illustrations of the general revolt against the authority of the past—a revolt that can be measured by the change in the fundamental presumption of men with respect to the value of human experience. In all former ages, all that was in the past was presumptively true, and the burden was upon him who sought to change it. To-day, the human mind apparently regards the lessons of the past as presumptively false—and the burden is upon him who seeks to invoke them.

Speaking on Christmas Eve a few years ago in an address to the College of Cardinals, the late Pope Benedict gave expression to an estimate of present conditions which should have attracted far greater attention than it apparently did.

The venerable Pontiff said that five plagues were now afflicting humanity.

The first was the unprecedented challenge to authority.

The second, an equally unprecedented hatred between man and man.

The third was the abnormal aversion to work.

The fourth, the excessive thirst for pleasure as the great aim of life.

The fifth, a gross materialism which denied the reality of the spiritual in human life.

The accuracy of this indictment will commend itself to men who, like the author, are not of Pope Benedict's communion.

The challenge to authority is universal and is not confined to that of the political state. Even in the narrower confines of the latter, the fires of revolution are either violently burning, or, at least, smouldering. Two of the oldest empires in the world, with approximately one-third of its population (China and Russia) are in a welter of anarchy; while many lesser nations are in a stage of disintegration. If the revolt were confined to autocratic governments, they might indicate merely a reaction against tyranny; but even in the most stable of democracies and among the most enlightened peoples, the underground rumblings of revolution may be heard.

Even England, the mother of democracies, and the most stable of all Governments in the maintenance of law, has been shaken to its very foundations in recent years, when powerful groups of men attempted to seize the State by the throat and compel submission to their demands by threatening to starve the community. This would be serious enough, if it were only the world-old struggle between capital and labor and had only involved the conditions of manual toil. But the insurrection against the political state in England was more political than it was economic. It marked, on the part of millions of men, a portentous decay of belief in representative government and its chosen organ—the ballot box. Great and powerful groups had suddenly discovered—and it may be the most portentous political discovery of the twentieth century—that the power involved in their control over the necessities of life, as compared with the power of the voting franchise, was as a forty-two centimetre cannon to the bow and arrow. The end sought to be attained, namely the nationalization of the basic industries, and even the control of the foreign policies of Great Britain, vindicated the truth of Lloyd George's statement that these great strikes involved something more than a struggle over the conditions of labor, and that they were essentially seditious attempts against the life of the State.

Nor were they altogether unsuccessful; for, when the armies of Lenin and Trotsky were at the gates of Warsaw,

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in the summer of 1920, the attempts of the Governments of England and Belgium to afford assistance to the embattled Poles were paralyzed by the labor groups of both countries, who threatened a general strike if those two nations joined with France in aiding Poland to resist a possibly greater menace to Western civilization than has occurred since Attila and his Huns stood on the banks of the Marne.

Of greater significance to the welfare of civilization is the complete subversion during the World War of nearly all the international laws which had been slowly built up in a thousand years. These principles, as codified by the two Hague Conventions, were immediately swept aside in the fierce struggle for existence, and civilized man, with his liquid fire and poison gas and his deliberate attacks upon undefended cities and their women and children, waged war with the unrelenting ferocity of primitive times.

This fierce war of extermination, which caused the loss of three hundred billion dollars in property and thirty millions of human lives, marked for the time being the "twilight of civilization." The hands on the dial of time had been put back—temporarily, let us hope and pray—a century.

Nor will many question the accuracy of the second count in Pope Benedict's indictment. The war to end war only ended in unprecedented hatred between nation and nation, class and class, and man and man. Victors and vanquished were involved in a common ruin. And if in this deluge of blood, which has submerged the world, there is a Mount Ararat, upon which the ark of a truer and better peace can find refuge, it has not yet appeared above the troubled surface of the waters.

Still less can one question the closely related third and fourth counts in Pope Benedict's indictment, namely the unprecedented aversion to work, when work is most needed to reconstruct the foundations of prosperity, or the excessive thirst for pleasure which preceded, accompanied, and now has followed the most terrible tragedy in the annals of mankind.

The true spirit of work seems to have vanished from millions of men; that spirit of which Shakespeare made his Orlando speak when he said of his true servant, Adam:

"O good old man! how well in thee appears
The constant service of the antique world,
When service sweat for duty, not for meed!"

The *morale* of our industrial civilization has been shattered. Work for work's sake, as the privilege of human faculties, has largely gone, both as an ideal and as a potent spirit, with millions of men. The conception of work as a degrading servitude, to be done with reluctance and grudging inefficiency, and as a mere means to the gratification of pleasure (now the dominant note of life) seems to be the new ideal.

The great evil of the world today is this aversion to work. As the mechanical era diminished the element of physical exertion in work, man should have sought expression for his physical faculties in other virile ways. On the contrary, the whole history of the mechanical era is a persistent struggle for more pay and less work, and today it has culminated in world-wide ruin; for nearly every nation is now in the throes of economic distress, and many of them are on the verge of ruin. The economic catastrophe of 1924 is far greater than the politico-military catastrophe of 1914.

In all countries the losses by such cessations from labor are little as compared with those due to the spirit, which in England is called "ca'-canny" or the shirking of performance of work, and of "sabotage," the deliberate destruction of machinery in operation. Everywhere the phenomenon has been observed that, with the highest wages known in the history of modern times, there has been an unmistakable lessening of efficiency, and that with an increase in the number of workers, there has been a decrease in output.

Accompanying this indisposition to work efficiently has been a mad desire for pleasure, such as, if it existed in like measure in preceding ages, has not been seen within the memory of living man. Man has danced upon the verge of a social abyss, and, as previously suggested, the dancing has, both in form and in accompanying music, lost its former grace and reverted to the primitive forms of crude vulgarity.*

* When the author had the privilege, in the summer of 1920, to have an audience with His Majesty, King Albert—"every inch a king" and one of

The present weariness and lassitude of human spirit and the disappointment and disillusion as to the aftermath of the harvest of blood, may have aggravated, but they could not cause these symptoms; for the obvious reason that all were in existence and apparent to a few discerning men decades before the war. Indeed, it is possible that the World War, far from causing the *malaise* of the age, was, in itself, but one of its many symptoms.

Undoubtedly, there are many contributing causes which have swollen the turbid tide of this world-wide revolution against the spirit of authority.

Thus, the multiplicity of laws does not tend to develop a law-abiding spirit. This fact has often been noted. Thus Napoleon, on the eve of the XVIII Brumaire, complained that France, with a thousand folios of law, was a lawless nation. Unquestionably, the political state suffers in authority by the abuse of legislation, and especially by the appeal to law to curb evils that are best left to individual conscience. It is idle to talk of respect for law when a law is not worthy of respect, for such respect is an involuntary state of mind, and wise legislators should reckon with it as such.

In this age of an individualistic democracy, the average man is apt to recognize two constitutions—one, the constitution of the State, and the second, an unwritten constitution, to him of higher authority, under which he believes that no law is obligatory which he regards as in excess of the true powers of government. Of this latter spirit, the widespread violation of the prohibition law is a familiar illustration.

A race of individualists obey reluctantly, when they obey at all, any laws which they regard as unreasonable or vexatious. They are increasingly opposed to any law, which affects their selfish interests. The law's delays and laxity in administration breed a spirit of contempt, and too often invite men to take the law into their own hands. These causes are so familiar that their statement is a commonplace.

The excessive emphasis upon the rights of man, which the greatest in the golden annals of heroism—he humorously said in speaking of current values that, so far as he could see, the greatest personalities in the world were Douglas Fairbanks and Charlie Chaplin.

marked the political upheaval of the close of the eighteenth and the beginning of the nineteenth century, has contributed to this malady of the age. Men talked, and still talk, loudly of their rights, but too rarely of their duties. And yet if we were to attribute the malady merely to excessive individualism, we would again err in mistaking a symptom for a cause.

Correctly to diagnose this malady some cause must be found that is coterminous in time with the disease itself and which has been operative throughout civilization; some widespread change in social conditions, for man's essential nature has changed but little, and the change must, therefore, be of environment.

There is but one such change that is sufficiently widespread and deep-seated to account adequately for this malady of the times.

Beginning with the close of the eighteenth century, and continuing throughout the nineteenth, a prodigious transformation has taken place in the environment of man, which has done more to revolutionize the conditions of human life than all the changes that had taken place in the 500,000 preceding years which science has attributed to man's life on the planet. Up to the period of Watt's discovery of steam vapor as a motive power, these conditions, so far as the principal facilities of life were concerned, were substantially those of the civilization which began eighty centuries ago on the banks of the Nile and later on the Euphrates. Man had indeed increased his conquest over Nature in later centuries by a few mechanical inventions, such as gunpowder, the telescope, magnetic needle, printing-press, spinning jenny, and hand-loom, but the characteristic of all those inventions, with the exception of gunpowder, was that they still remained a *subordinate* auxiliary to the physical strength and mental skill of man. In other words, man still dominated the machine, and there was still full play for his physical and mental faculties. Moreover, all the inventions of preceding ages, from the first fashioning of the flint to the spinning-wheel and the hand-lever press, were all conquests of the tangible and visible forces of Nature.

With Watt's utilization of steam vapor as a motive power,

man suddenly passed into a new and portentous chapter of his varied history. Thenceforth, he was to multiply his powers a thousandfold by the utilization of the invisible powers of Nature—such as vapor and electricity. This prodigious change in his powers, and therefore his environment, has proceeded with ever accelerating speed.

Man has suddenly become the superman. Like the giants of the ancient fable, he has stormed the very ramparts of Divine power, or, like Prometheus, he has stolen the fire of omnipotent forces from Heaven itself for his use. His voice can now reach from the Atlantic to the Pacific, and, taking wing in his aeroplane, he can fly in one swift flight from Nova Scotia to England, or he can leave Lausanne and, resting upon the icy summit of Mont Blanc—thus, like “the herald, Mercury, new-lighted on a heaven-kissing hill”—he can again plunge into the void, and thus outfly the eagles themselves.

Rodin, the great French sculptor, wrote in 1904 as follows:

“It may be replied that the inventions of science compensate for this deficiency (the neglect of the fine arts), but these inventions are almost exclusively, if not quite, a mere increase in the power of the bodily senses and faculties, the telegraph in that of the tongue, the telephone in that of the ear, the railway in that of the legs, the photographic science in that of the eye; and these inventions leave in ignorance the more intellectual part of the individual. Your portrait can be taken, your voice boxed up. This is extraordinary, but the soul which commands, the god which is in the head, is forgotten.”

In thus acquiring from the forces of Nature almost illimitable power, man has minimized the necessity for his own physical exertion or even mental skill. The machine now not only acts for him, but too often *thinks* for him.

Is it surprising that so portentous a change should have fevered his brain and disturbed his mental equilibrium? A new ideal, which he proudly called “progress,” obsessed him, the ideal of quantity and not quality. His practical religion became that of acceleration and facilitation—to do things more

quickly and easily—and thus to minimize exertion became his great objective. Less and less he relied upon the initiative of his own brain and muscle, and more and more he put his faith in the power of machinery to relieve him of labor.

As a result, the evil of the age is that its values are false.

Knowledge is undervalued to wisdom; they are not convertible terms. Quantity, and not quality, is the ideal of the time. Automatic efficiency is the great desideratum, and individual craftsmanship is little regarded as an ideal. Complexity is worshipped, and simplicity is rejected. Standardization is overvalued and originality undervalued.

Pleasure has become the great end of life, and work but a means to that end; whereas, in former ages, work was the great object of life, and pleasure but an incident, the dessert to Life's bountiful repast.

This age overvalues phrases and undervalues truth. It overvalues rights and undervalues duties. It undervalues individualism and overvalues democracy, for it forgets that, from the beginning of history, the salvation of society has been the work of the minority,—that "saving remnant," of which Matthew Arnold spoke. The age greatly overvalues political institutions; but seems indifferent to the deterioration of the individual. It values power and scorns beauty. To sum it all up,—it overvalues matter and undervalues spirit.

This may seem too dark a picture of the times, and, happily, it is but one side of the shield. The reverse side is more gratifying. Nothing is more striking than the wonderful development of music in America in the last quarter of a century. The larger cities in America are showing a true Hellenic love of civic beauty, and lovely parks, imposing centres, and noble art galleries are everywhere evidencing an appreciation of æsthetic values which seems irreconcilable with the pessimistic view of the times. In this, as in other respects, life is a self-contradicting riddle.

It is, however, to be noted that, both in art and in music, the quality of the public mind is more receptive and imitative than creative. Norway is a little country chiefly composed of farmers and fishermen,—and yet it has produced, in the present

generation, at least five great men, who can read their title clear to immortality. America, with a hundred millions of people, has never yet given birth to one musician, dramatic author, or even artist of the first rank. Sargent and St. Gaudens may hereafter rank as stars of the second or third magnitude; but can never be classed with those of the first magnitude, as Raphael, Michael Angelo, Rembrandt, Franz Hals, or even with Gainsborough or Sir Joshua Reynolds. No American musician has yet arisen who could compare with Bach or Beethoven,—and this is the more amazing when it is recalled that not only the blood but the artistic temperaments of the greatest nations of Europe have contributed to that amalgam of all nations,—the American. For this, there seems to be but one explanation, and that is the gross overvaluation in America of mechanical power.

No one has better stated the indictment against such inordinate overvaluation than Dr. R. Austin Freeman, in his recent book, *Social Decay and Regeneration*, in which he forcefully says:

“Mechanism by its reactions on man and his environment is antagonistic to human welfare. It has destroyed industry and replaced it by mere labour; it has degraded and vulgarized the works of man; it has destroyed social unity and replaced it by social disintegration and class antagonism to an extent which directly threatens civilization; it has injuriously affected the structural type of society by developing its organization at the expense of the individual; it has endowed the inferior man with political power which he employs to the common disadvantage by creating political institutions of a socially destructive type; and finally by its reactions on the activities of war it constitutes an agent for the wholesale physical destruction of man and his works and the extinction of human culture. It is thus strictly analogous to those anti-bodies by which the existence of aggregates of the lower organisms is brought to an end.”

A terrible, although exaggerated indictment, but the times give it some proof. Man glories in the fact that he can talk a

thousand miles, but ignores the greater question, whether when he out-does Stentor, he has anything worth saying. He has now made the serene spaces of the upper Heavens his media to transmit market reports and sporting news, second-rate music and worse oratory and in the meantime the great masters of thought, Homer and Shakespeare, Dante and Milton remain unbidden on the library shelves. What a sordid Vanity Fair is modern civilization!

This incalculable multiplication of power has intoxicated man. The lust has obsessed him, without regard to whether it be constructive or destructive. Quantity, not quality, becomes the great objective. Man consumes the treasures of the earth faster than he produces them, deforesting its surface and disembowelling its hidden wealth. As he feverishly multiplied the things he desired, even more feverishly he multiplied his wants.

To gain these, man sought the congested centres of human life. While the world, as a whole, is not over-populated, the leading countries of civilization were subjected to this tremendous pressure. Europe, which, at the beginning of the nineteenth century, barely numbered 100,000,000 people, suddenly grew nearly five-fold. Millions left the farms to gather into the cities to exploit their new and seemingly easy conquest over Nature.

In the United States, as recently as 1880, only 15 per cent of the people were crowded in the cities, 85 per cent remained upon the farms and still followed that occupation, which, of all occupations, still preserves in its integrity the dominance of human labor over the machine. Today, 52 per cent of the population is in the cities, and with many existence is both feverish and artificial. While they have employment, many of them do not themselves work, but spend their lives in watching machines work.

The result has been a minute subdivision of labor that has denied to many workers the true significance and physical benefit of labor.

The direct results of this excessive tendency to specialization, whereby not only the work but the worker becomes divided

into mere fragments, are threefold. Hobson, in his work on John Ruskin, thus classifies them. In the first place, *narrowness*, due to the confinement to a single action in which the elements of human skill or strength are largely eliminated; secondly, *monotony*, in the assimilation of man to a machine, whereby seemingly the machine dominates man and not man the machine, and, thirdly, *irrationality*, in that work becomes disassociated in the mind of the worker with any complete or satisfying achievement. The worker does not see the fruit of his travail, and cannot therefore be truly satisfied.

To spend one's life in opening a valve to make a part of a pin is, as Ruskin pointed out, demoralizing in its tendencies.

Thus millions of men have lost both the opportunity for real physical exertion, the incentive to work in the joyous competition of skill, and finally the reward of work in the sense of achievement.

More serious than this, however, has been the destructive effort of quantity, the great object of the mechanical age, at the expense of quality.

Take, for example, the printing-press: No one can question the immense advantages which have flowed from the increased facility for transmitting ideas. But may it not be true that the thousandfold increase in such transmission by the rotary press has also tended to muddy the current thought of the time? True it is that the printing-press has piled up great treasures of human knowledge which make this age the richest in accessible information, but what of the current thought of the living generation?

It may be questioned whether it has the same clarity as the brain of the generation which fashioned the Constitution of the United States. The framers could not talk over the telephone for three thousand miles, but can this generation surpass them in thoughts of enduring value? Washington and Franklin could not travel sixty miles an hour in a railroad train, or twice that speed in an aeroplane, but does it follow that they did not travel to as good purpose as men of this age, who scurry to and fro like the ants in a disordered ant-heap?

Unquestionably, man of to-day has a thousand ideas sug-

gested to him by the newspaper and the library where our ancestors had one; but has he the same spirit of calm inquiry and does he co-ordinate the facts as wisely as his ancestors did? Today a man knows a little about more things than the wisest of his ancestors, but does he know as much about any one thing of enduring value? Athens in the days of Pericles had but thirty thousand people and few mechanical inventions; but she produced philosophers, poets and artists, whose work after more than twenty centuries still remains the despair of the would-be imitators.

Shakespeare had a theatre with the ground as its floor and the sky as its ceiling; but New York, which has fifty theatres and annually spends \$100,000,000 in the box offices of its varied amusement resorts, has rarely in two centuries produced a play that has lived.

Today, man has a cinematographic brain. A thousand images are impressed daily upon the screen of his consciousness, but they are as fleeting as moving pictures in a cinema theatre. The American press prints every year over 29,000,000,000 issues. No one can question its educational possibilities, for the best of all colleges is potentially the University of Gutenberg. If it printed only the truth, its value would be infinite; but who can say in what proportions of this vast volume of printed matter is the true and the false? The framers of the Constitution had few books and fewer newspapers. Their thoughts were few and simple, but what they lacked in quantity they made up in unsurpassed quality.

Before the beginning of the present mechanical age, the current of living thought could be likened to a mountain stream, which though confined within narrow banks yet had waters of crystalline clearness. May not the current thought of our time be compared with the mighty Mississippi in the period of a spring freshet? Its banks are wide and its current swift, but the turbid stream that flows onward is one of muddy swirls and eddies and overflows its banks to their destruction.

The great indictment, however, of the present age of mechanical power is that it has largely destroyed the spirit of

work. The great enigma which it propounds to us, and which, like the riddle of the Sphinx, we will solve or be destroyed, is this:

Has the increase in the potential of human power, through thermodynamics, been accompanied by a corresponding increase in the potential of human character?

To this life and death question, a great French philosopher, Le Bon, writing in 1910, replied that the one unmistakable symptom of human life was "the increasing deterioration in human character," and a great physicist has described the symptom as "the progressive enfeeblement of the human will."

In a famous book, *Degeneration*, written at the close of the nineteenth century, Max Nordau, as a pathologist, explains this tendency by arguing that our complex civilization has placed too great a strain upon the limited nervous organization of man.

A great financier, the elder J. P. Morgan, once said of an existing financial condition that it was suffering from "undigested securities," and, paraphrasing him, is it not possible that man is suffering from undigested achievements and that his salvation must lie in adaptation to a new environment, which, measured by any standard known to science, is a thousandfold greater in this year of grace than it was at the beginning of the nineteenth century?

No one would be mad enough to urge such a retrogression as the abandonment of labor-saving machinery would involve. Indeed, it would be impossible; for, in speaking of its evils, it must be recognized that not only would civilization perish without its beneficent aid, but that every step forward in the history of man has been coincident with, and in large part attributable to, a new mechanical invention.

But suppose the development of labor-saving machinery should reach a stage where all human labor was eliminated, what would be the effect on man? The answer is contained in an experiment which Sir John Lubbock made with a tribe of ants. Originally the most voracious and militant of their

species, yet when denied the opportunity for exercise and freed from the necessity of foraging for their food, in three generations they became anæmic and perished.

Take from man the opportunity of work and the sense of pride in achievement and you have taken from him the very life of his existence. Robert Burns could sing as he drove his ploughshare through the fields of Ayr. Today millions who simply watch an automatic infallible machine, which requires neither strength nor skill, do not sing at their work, but too many curse the fate which has chained them, like Ixion, to a soulless machine.

The evil is even greater.

The specialization of our modern mechanical civilization has caused a submergence of the individual into the group or class. Man is fast ceasing to be the unit of human society. Self-governing groups are becoming the new units. This is true of all classes of men, the employer as well as the employee. The true justification for the American anti-monopoly statutes, including the Sherman anti-trust law, lies not so much in the realm of economics as in that of morals. With the submergence of the individual, whether he be capitalist or wage-earner, into a group, there has followed the dissipation of moral responsibility. A mass morality has been substituted for individual morality, and, unfortunately, group morality generally intensifies the vices more than the virtues of man.

Possibly, the greatest result of the mechanical age is this spirit of organization.

Its merits are manifold and do not require statement; but they have blinded us to the demerits of excessive organization.

We are now beginning to see—slowly, but surely—that a faculty of organization which, as such, submerged the spirit of individualism, is not an unmixed good.

Indeed, the moral lesson of the tragedy of Germany is the demoralizing influence of organization carried to the *n*th power. No nation was ever more highly organized than this modern State. Physically, intellectually and spiritually it had become a highly developed machine. Its dominating mechanical spirit so submerged the individual that, in 1914, the paradox was

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observed of an enlightened nation that was seemingly destitute of a conscience.

What was true of Germany, however, was true—although in lesser degree—of all civilized nations. In all of them, the individual had been submerged in group formations, and the effect upon the character of man has been destructive of his nobler self.

This may explain the paradox of so-called "progress." It may be likened to a great wheel, which, from the increasing domination of mechanical forces, developed an ever-accelerating speed, until, by centrifugal action, it went off its bearings in 1914 and caused an unprecedented catastrophe. As man slowly pulls himself out of that gigantic wreck and recovers consciousness, he begins to realize that speed is not necessarily progress.

To all this, the nineteenth century, in its exultant pride in its conquest of the invisible forces, was almost blind. It not only accepted progress as an unmistakable fact—mistaking, however, acceleration and facilitation for progress—but in its mad folly believed in an immutable law of progress which, working with the blind forces of machinery, would propel man forward.

A few men, however, standing on the mountain ranges of human observation, saw the future more clearly than did the mass. Emerson, Carlyle, Ruskin, Samuel Butler, and Max Nordau, in the nineteenth century, and, in our time, Ferrero, all pointed out the inevitable dangers of the excessive mechanization of human society. The prophecies were unhappily as little heeded as those of Cassandra.

One can see the tragedy of the time, as a few saw it, in comparing the first *Locksley Hall* of Alfred Tennyson, written in 1827, with its abiding faith in the "increasing purpose of the ages" and its roseate prophecies of the golden age, when the "war-drum would throb no longer and the battle flags be furled in the Parliament of a Man and the Federation of the World," and the later *Locksley Hall*, written sixty years later, when the great spiritual poet of our time gave utterance to the dark pessimism which flooded his soul:

"Gone the cry of 'Forward, Forward,' lost within a growing gloom;
Lost, or only heard in silence from the silence of a tomb.

Half the marvels of my morning, triumphs over time and space,
Staled by frequency, shrunk by usage, into commonest commonplace!

Evolution ever climbing after some ideal good,
And Reversion ever dragging Evolution in the mud.

Is it well that while we range with Science, glorying in the Time,
City children soak and blacken soul and sense in city slime?"

There are many palliatives for the evil. To rekindle in men the love of work for work's sake and the spirit of discipline, which a strong sense of human solidarity once inspired, would do much to solve the problem, for work is the greatest moral force in the world.

If the present generation can only recognize that the evil exists, then the situation is not past remedy; for man has never yet found himself in a blind alley of negation. He is still "master of his soul and captain of his fate," and the most encouraging sign of the times is the persistent evidence of contemporary literature that thoughtful men now recognize that much of our boasted progress was as unsubstantial as a rainbow. While the temper of the times seems for the moment pessimistic, it merely marks the recognition of man of an abyss, whose existence he barely suspected but over which his indomitable courage will yet carry him.

We must have faith in the inextinguishable spark of the Divine, which is in the human soul and which our complex mechanical civilization has not extinguished. Of this, the World War was in itself a proof. All the horrible resources of mechanics and chemistry were utilized to coerce the human soul, and all proved ineffectual. Never did men rise to greater heights of self-sacrifice or show a greater fidelity "even unto death." Millions went to their graves, as to their beds, for an ideal; and when that is possible, this Pandora's box of modern civilization, which contains all imaginable evils, as well as benefits, also leaves hope behind.

The great Roumanian statesman Taku Jonescu, during the Peace Conference at Paris, when asked his views as to the

future of civilization, replied: "Judged by the light of reason there is but little hope, but I have faith in man's inextinguishable impulse to live."

Happily, that cannot be affected by any change in man's environment! For even when the cave-man retreated from the advance of the polar cap, which once covered Europe with Arctic desolation, he not only defied the elements but showed even then the love of the sublime by beautifying the walls of his icy prison with those mural decorations which were the beginning of art.

Assuredly, the man of today, with the rich heritage of countless ages, can do no less. He has but to diagnose the evil and he will then, in some way, meet it.

But what can man-made law do in this warfare against the blind forces of Nature?

It is easy to exaggerate the value of all political institutions; for they are generally on the surface of human life and do not reach down to the deep under-currents of human nature. But the law can do something to protect the soul of man from destruction by the soulless machine.

It can defend the spirit of individualism. It must champion the human soul in its God-given right to exercise freely the faculties of mind and body. It must defend the right to work against those who would either destroy or degrade it. It must defend the right of every man, not only to join with others in protecting his interests, whether he be a brain worker or a hand worker—for without the right of combination the individual would often be the victim of giant forces—but it must vindicate the equal right of an individual, if he so wills, to depend upon his own strength.

The tendency of group morality to standardize man—and thus reduce all men to the dead level of an average mediocrity—is one that the law should combat. Its protection should be given to those of superior skill and diligence, who ask the due rewards of such superiority. Any other course, to use the fine phrase of Thomas Jefferson in his first inaugural, is to "take from the mouth of labor the bread it has earned."

Of this spirit one of the noblest expressions is the Constitu-

tion of the United States. That Magna Charta has not wholly escaped the destructive tendencies of a mechanical age. It was framed at the very end of the pastoral-agricultural age and at a time when the spirit of individualism was in full flower. The hardy pioneers who, with their axes, made straight the pathway of an advancing civilization, were sturdy men, who need not be undervalued to us of the mechanical age. The "prairie schooner," which met the elemental forces of Nature with the proud challenge: "Pike's Peak or bust," produced as fine a type of manhood as the age which travels either in Mr. Ford's "flivver" or the more luxurious Rolls-Royce.

The greatest and noblest purpose of the Constitution was not alone to hold in nicest equipoise the relative powers of the nation and the States, but also to maintain in the scales of justice a true equilibrium between the rights of government and the rights of an individual. It did not believe that the State was omnipotent or infallible, and yet it proclaimed its authority within wise and just limits. It defended the integrity of the human soul.

In other governments, these fundamental decencies of liberty rest upon the conscience of the legislature. Under the American Constitution, they are part of the fundamental law, and, as such, enforceable by judges sworn to defend the integrity of the individual as fully as the integrity of the State.

When did a nobler "vision" inspire men in the political annals of mankind? Without that vision to restrain each succeeding generation of Americans from the tempting excesses of political power, the American Commonwealth, with its great heterogeneous democracy, would one day perish.

That vision still remains as an ideal with the American people and still leads them to ever-higher achievements, for in all the mad changes of a frenzied hour, they have not yet lost faith in or love for the Constitution of the Fathers! That vision will remain with them as long, and no longer, as there is in their hearts a conscious and willing acquiescence in its wisdom and justice. Obviously, it can have no inherent vigor to perpetuate itself. If it ceases to be of the spirit of the people, then the yellow parchment, whereon it is inscribed, can

avail nothing. When that parchment was last taken from the safe in the State Department, the ink, in which it had been engrossed nearly one hundred and thirty-seven years ago, was found to have faded.

All who believe in constitutional government must hope that this is not a portentous symbol. The American people must write the compact, not with ink upon parchment, but with "letters of living light"—to use Webster's phrase—upon their hearts.

Again the solemn warning of the wise man of old suggests itself:

"Where there is no vision, the people perish; but he that keepeth the law, happy is he."

Again his solemn injunction comes to the present generation, which is fast wasting its precious heritage:

"Remove not the ancient Landmark, which thy Fathers have set."

**APPENDICES
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APPENDIX I

THE VIRGINIA PLAN

1. RESOLVED, that the Articles of Confederation ought to be so corrected and enlarged as to accomplish the objects proposed by their institution; namely, common defence, security of liberty, and general welfare.

2. RESOLVED, therefore, that the rights of suffrage in the National Legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.

3. RESOLVED, that the National Legislature ought to consist of two branches.

4. RESOLVED, that the members of the first branch of the National Legislature ought to be elected by the people of the several States every for the term of; to be of the age of years at least; to receive liberal stipends by which they may be compensated for the devotion of their time to public service; to be ineligible to any office established by a particular State, or under the authority of the United States, except those peculiarly belonging to the functions of the first branch, during the term of service, and for the space of after its expiration; to be incapable of re-election for the space of after the expiration of their term of service, and be subject to recall.

5. RESOLVED, that the members of the second branch of the National Legislature ought to be elected by those of the first, out of a proper number of persons nominated by the individual legislatures, to be of the age of years at least; to hold their offices for a term sufficient to ensure their independency; to receive liberal stipends, by which they may be compensated for the devotion of their time to public service; and to be ineligible to any office established by a particular state, or under the authority of the United States, except those peculiarly belonging to the functions of the second branch, during the term of service; and for the space of after the expiration thereof.

6. RESOLVED, that each branch ought to possess the right of originating acts; that the National Legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation, and moreover to legislate in all cases to which the separate states are incompetent, or in which the harmony of the United States

may be interrupted by the exercise of individual legislation; to negative all laws passed by the several States contravening, in the opinion of the National Legislature, the Articles of Union; and to call forth the force of the Union against any member of the Union failing to fulfill its duty under the Articles thereof.

7. RESOLVED, that a National Executive be instituted; to be chosen by the National Legislature for the term of years; to receive punctually, at stated times, a fixed compensation for the services rendered, in which no increase or diminution shall be made, so as to affect the magistracy, existing at the time of increase or diminution, and to be ineligible a second time; and that besides a general authority to execute the national laws, it ought to enjoy the executive rights vested in Congress by the Confederation.

8. RESOLVED, that the Executive and a convenient number of the national Judiciary, ought to compose a Council of Revision, with authority to examine every act of the National Legislature before it shall operate, and every act of a particular Legislature before a negative thereon shall be final; and that the dissent of the said Council shall amount to a rejection, unless the act of the National Legislature be again passed, or that of a particular Legislature be again negated by of the members of each branch.

9. RESOLVED, that a National Judiciary be established to consist of one or more supreme tribunals, and of inferior tribunals to be chosen by the National Legislature, to hold their offices during good behavior, and to receive punctually, at stated times, fixed compensation for their services, in which no increase or diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution. That the jurisdiction of the inferior tribunals shall be to hear and determine in the first instance and of the supreme tribunal to hear and determine, in the dernier resort, all piracies, and felonies on the high seas, captures from an enemy; cases in which foreigners, or citizens of other States, applying to such jurisdictions may be interested, or which respect the collection of the national revenue; impeachments of any national officers, and questions which may involve the national peace and harmony.

10. RESOLVED, that provision ought to be made for the admission of States lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the National Legislature less than the whole.

11. RESOLVED, that a republican government, and the territory of each State, except in the instance of a voluntary junction of government and territory, ought to be guaranteed by the United States to each State.

12. RESOLVED, that provision ought to be made for the continuance of Congress and their authorities and privileges, until a given day

after the reform of the Articles of Union shall be adopted, and for the completion of all their engagements.

13. RESOLVED, that provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary, and that the assent of the National Legislature ought not to be required thereto.

14. RESOLVED, that the legislative, executive, and judiciary powers, within the several States ought to be bound by oath to support the Articles of Union.

15. RESOLVED, that the amendments which shall be offered to the Confederation, by the Convention, ought at a proper time, or times, after the approbation of Congress to be submitted to an assembly or assemblies of representatives, recommended by the several Legislatures to be expressly chosen by the people, to consider and decide thereon.

APPENDIX II

THE NEW JERSEY PLAN

1. RESOLVED, that the Articles of Confederation ought to be so revised, corrected and enlarged, as to render the Federal Constitution adequate to the exigencies of government, and the preservation of the Union.

2. RESOLVED, that in addition to the powers vested in the United States in Congress, by the present existing Articles of Confederation, they be authorized to pass acts for raising a revenue, by levying a duty or duties on all goods or merchandise, of foreign growth or manufacture, imported into any part of the United States, by stamps on paper, vellum or parchment; and by a postage on all letters or packages passing through the general post-office, to be applied to such Federal purposes as they shall deem proper and expedient; to make rules and regulations for the collection thereof; and the same from time to time, to alter and amend in such manner as they shall think proper; to pass acts for the regulation of trade and commerce as well with foreign nations as with each other; provided that all punishments, fines, forfeitures and penalties to be incurred for contravening such acts, rules and regulations, shall be judged by the common law Judiciaries of the State in which any offence contrary to the true intent and meaning of such acts, rules, and regulations shall have been committed or perpetrated, with liberty of commencing in the first instance all suits and prosecutions for that purpose in the superior common law Judiciary in such States, subject, nevertheless, for the correction of all errors, both in law and fact, in rendering judgment, to an appeal to the Judiciary of the United States.

3. RESOLVED, that whenever requisition shall be necessary, instead of the rule for making requisitions mentioned in the Articles of Confederation, the United States in Congress be authorized to make such requisitions in proportion to the whole number of white and other free citizens and inhabitants of every age, sex, and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes; that if such requisitions be not complied with, in the time specified therein, to direct the collection thereof in the non-complying States, and for that purpose to devise and pass acts directing and authorizing the same; provided, that none of the powers hereby vested in the United States in Congress

shall be exercised without the consent of at least States, and in that proportion if the number of confederated States should hereafter be increased or diminished.

4. RESOLVED, that the United States in Congress be authorized to elect a Federal Executive, to consist of persons, to continue in office for the term of years, to receive punctually at stated times a fixed compensation for their services, in which no increase or diminution shall be made so as to affect the persons composing the Executive at the time of such increase or diminution, to be paid out of the Federal treasury, to be incapable of holding any other office or appointment during their time of service and for years thereafter; to be ineligible a second time, and removable by Congress on application by a majority of the Executives of the several States; that the Executives besides their general authority to execute the Federal acts, ought to appoint all Federal officers not otherwise provided for, and to direct all military operations; provided, that none of the persons composing the Federal Executive shall on any occasion take command of any troops, so as personally to conduct any military enterprise as General or in any other capacity.

5. RESOLVED, that a Federal Judiciary be established, to consist of a supreme tribunal, the Judges of which to be appointed by the Executive, and to hold their offices during good behavior; to receive punctually at stated times a fixed compensation for the services, in which no increase nor diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution. That the Judiciary so established shall have authority to hear and determine in the first instance on all impeachments of Federal officers; and by way of appeal, in the dernier resort in all cases touching the rights of ambassadors, in all cases of captures from an enemy; in all cases of piracies and felonies on the high seas; in all cases in which foreigners may be interested, in the construction of any treaty or treaties, or which may arise on any of the acts for regulation of trade, or the collection of the Federal revenue; that none of the Judiciary shall, during the time they remain in office, be capable of receiving or holding any other office or appointment during their time of service, or for thereafter.

6. RESOLVED, that all acts of the United States in Congress made by virtue and in pursuance of the powers hereby and by the Articles of Confederation vested in them, and all treaties, made and ratified under the authority of the United States shall be the supreme law of the respective States, so far forth as those acts or treaties shall relate to the said States or their citizens, and that the judiciary of the several States shall be bound thereby in their decisions, anything in the respective laws of the individual States to the contrary notwithstanding; and that if any State, or any body of men in any State, shall oppose or prevent the carrying into execution such acts or

treaties, the Federal Executive shall be authorized to call forth the power of the Confederate States, or so much thereof as may be necessary to enforce and compel an obedience to such acts, or an observance of such treaties.

7. RESOLVED, that provision be made for the admission of new States into the Union.

8. RESOLVED, that the rule for naturalization ought to be the same in every State.

9. RESOLVED, that a citizen of one State committing an offence in another State of the Union, shall be deemed guilty of the same offence as if it had been committed by a citizen of the State in which the offence was committed.

APPENDIX III

THE CONSTITUTION OF THE UNITED STATES

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Place of Chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION 5. Each House shall be the Judge of the Elections, Re-

turns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be

returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Time to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or

Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE II.

SECTION I. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice-President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The Electors shall meet in their respective States, and vote by Ballot for two persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice-President.]

The Congress may determine the Time of chusing the Electors, and

the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

SECTION 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any subject relating to the Duties of their respective Offices, and he shall have Power to Grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III.

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting the Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such exceptions, and under such Regulations as the Congress shall make.

The trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION 3. Treason against the United States, shall consist only in

levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE IV.

SECTION 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

SECTION 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the

Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office of public Trust under the United States.

ARTICLE VII.

The Ratification of the Conventions of nine States shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth. In Witness whereof We have hereunto subscribed our Names.

Go. WASHINGTON

Presidt and deputy from Virginia

New Hampshire.

JOHN LANGDON

NICHOLAS GILMAN

Massachusetts.

NATHANIEL GORHAM
RUFUS KING

Connecticut.

WM: SAML. JOHNSON
ROGER SHERMAN

New York.

ALEXANDER HAMILTON

New Jersey.

WIL: LIVINGSTON
DAVID BREARLEY.
WM: PATTERSON.
JONA: DAYTON

Pennsylvania.

B FRANKLIN
THOMAS MIFFLIN
ROBT MORRIS
GEO. CLYMER
THOS. FITZSIMONS
JARED INGERSOLL
JAMES WILSON
GOV MORRIS

Delaware.

GEO: READ
GUNNING BEDFORD jun
JOHN DICKINSON
RICHARD BASSETT
JACO: BROOM

Maryland.

JAMES MCHENRY
DAN OF ST THOS JENIFER
DANL. CARROLL

Virginia.

JOHN BLAIR—
JAMES MADISON Jr.

North Carolina.

WM. BLOUNT
RICHD. DOBBS SPAIGHT
HU WILLIAMSON

South Carolina.

J. RUTLEDGE
CHARLES COTESWORTH PINCKNEY
CHARLES PINCKNEY
PIERCE BUTLER.

Georgia.

WILLIAM FEW

ABR BALDWIN

Attest:

WILLIAM JACKSON, *Secretary.*

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION
OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND
RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES, PUR-
SUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

[ARTICLE I.]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

[ARTICLE II.]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

[ARTICLE III.]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

[ARTICLE IV.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[ARTICLE V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[ARTICLE VI.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

[ARTICLE VII.]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reëxamined in any Court of the United States, than according to the rules of the common law.

[ARTICLE VIII.]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

[ARTICLE IX.]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

[ARTICLE X.]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

ARTICLE XII.

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the

seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XVI.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

ARTICLE XVII.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

ARTICLE XVIII.

SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SEC. 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

SEC. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

ARTICLE XIX.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

APPENDIX IV

MACAULAY'S CORRESPONDENCE WITH RANDALL

HOLLEY LODGE, KENSINGTON, LONDON,

May 23, 1857.

DEAR SIR:—The four volumes of the "Colonial History of New York" reached me safely. I assure you that I shall value them highly. They contain much to interest an English as well as an American reader. Pray, accept my thanks, and convey them to the Regents of the University.

You are surprised to learn that I have not a high opinion of Mr. Jefferson, and I am surprised at your surprise. I am certain that I never wrote a line, and that I never in Parliament, in conversation or even on the hustings—a place where it is the fashion to court the populace—uttered a word indicating an opinion that the supreme authority in a state ought to be entrusted to the majority of citizens told by the head; in other words, to the poorest and most ignorant part of society. I have long been convinced that institutions purely democratic must, sooner or later, destroy liberty or civilization, or both.

In Europe, where the population is dense, the effect of such institutions would be almost instantaneous. What happened lately in France is an example. In 1848 a pure democracy was established there. During a short time there was reason to expect a general spoilation, a national bankruptcy, a new partition of the soil, a maximum of prices, a ruinous load of taxation laid on the rich for the purpose of supporting the poor in idleness. Such a system would, in twenty years, have made France as poor and barbarous as the France of the Carolingians. Happily, the danger was averted; and now there is a despotism, a silent tribune, an enslaved press. Liberty is gone, but civilization has been saved. I have not the smallest doubt that, if we had a purely democratic government here, the effect would be the same. Either the poor would plunder the rich and civilization would perish, or order and prosperity would be saved by a strong military government, and liberty would perish. You may think that your country enjoys an exemption from these evils. I will frankly own to you that I am of a very different opinion. Your fate I believe to be settled, though it is deferred by a physical cause. As long as you have a boundless extent of fertile and unoccupied

land, your laboring population will be far more at ease than the laboring population of the old world, and, while that is the case, the Jefferson politics may continue to exist without causing any fatal calamity. But the time will come when New England will be as thickly populated as old England. Wages will be as low, and will fluctuate as much with you as with us. You will have your Manchesters and Birminghams, and in those Manchesters and Birminghams hundreds of thousands of artisans will assuredly be sometimes out of work. Then, your institutions will be fairly brought to the test. Distress everywhere makes the laborer mutinous and discontented, and inclines him to listen with eagerness to agitators who tell him that it is a monstrous iniquity that one man should have a million while another cannot get a full meal. In bad years there is plenty of grumbling here, and sometimes a little rioting. But it matters little. For here, the sufferers are not the rulers. The supreme power is in the hands of a class, numerous indeed, but select; of an educated class; of a class which is, and knows itself to be, deeply interested in the security of property and maintenance of order. Accordingly, the malcontents are firmly yet gently restrained. The bad time is got over without robbing the wealthy to relieve the indigent. The springs of national prosperity soon begin to flow again; work is plentiful, wages rise, and all is tranquility and cheerfulness. I have seen England pass three or four times through such critical seasons as I have described. Through such seasons the United States will have to pass in the course of the next century, if not of this. How will you pass through them? I heartily wish you a good deliverance. But my reason and my wishes are at war, and I cannot help forbidding the worst. It is quite plain that your government will never be able to restrain a distressed and discontented majority. For with you the majority is the government, and has the rich, who are always a minority, absolutely at its mercy. The day will come when, in the State of New York, a multitude of people, none of whom has had more than half a breakfast, or expects to have more than half a dinner, will choose a Legislature. Is it possible to doubt what sort of a Legislature will be chosen? On one side is a statesman teaching patience, respect for vested rights, strict observance of public faith. On the other is a demagogue ranting about the tyranny of capitalists and usurists, and asking why anybody should be permitted to drink champagne and to ride in a carriage, while thousands of honest folks are in want of necessities. Which of the two candidates is likely to be preferred by a workingman who hears his children cry for more bread? I seriously apprehend that you will in some such season of adversity as I have described, do things which will prevent prosperity from returning; that you will act like people who should in a year of scarcity devour all the seed corn, and thus make the

next a year, not of scarcity, but of absolute famine. There will be, I fear, spoilation. The spoilation will increase the distress. The distress will produce fresh spoilation. There is nothing to stop you. Your Constitution is all sail and no anchor. As I said before, when a society has entered on this downward progress, either civilization or liberty must perish. Either some Cæsar or Napoleon will seize the reins of government with a strong hand, or your Republic will be as fearfully plundered and laid waste by barbarians in the 20th Century as the Roman Empire was in the fifth, with this difference, that the Huns and Vandals who ravaged the Roman Empire came from without, and that your Huns and Vandals will have been engendered within your own country by your own institutions.

Thinking thus, of course I cannot reckon Jefferson among the benefactors of mankind. I readily admit that his intentions were good and his abilities considerable. Odious stories have been circulated about his private life; but I do not know on what evidence those stories rest, and I think it probable that they are false or monstrously exaggerated. I have no doubt that I shall derive both pleasure and information from your account of him.

I have the honor to be, dear sir, your faithful servant,

T. B. MACAULAY.

H. S. RANDALL, Esq., etc., etc., etc.

HOLLEY LODGE, KENSINGTON,

October 9, 1858.

SIR:—I beg you to accept my thanks for your volumes, which have just reached me, and which, as far as I can judge from the first hasty inspection, will prove both interesting and instructive.

Your book was preceded by a letter, for which I have also to thank you. In that letter you expressed, without the smallest discourtesy, a very decided dissent from some opinions which I have long held firmly, but which I should never have intruded on you except at your own earnest request, and which I have no wish to defend against your objections.

If you can derive any comfort as to the future destinies of your country from your conviction that a benevolent Creator will never suffer more human beings to be born than can live in plenty, it is a comfort of which I should be sorry to deprive you. By the same process of reasoning, one may arrive at many very agreeable conclusions, such as that there is no cholera, no malaria, no yellow fever, no negro slavery, in the world. Unfortunately for me, perhaps, I learned from Lord Bacon a method of investigating truth diametrically opposite to that which you appear to follow. I am perfectly aware of the immense progress which your country has made and is making in population and wealth. I know that the laborer with you has large wages, abundant food, and the means

of giving some education to his children. But I see no reason for attributing these things to the policy of Jefferson. I see no reason to believe that your progress would have been less rapid, that your laboring people would have been worse fed, or clothed, or taught, if your government had been conducted on the principles of Washington and Hamilton. Nay, you will, I am sure, acknowledge that the progress which you are now making is only a continuation of the progress which you have been making ever since the middle of the seventeenth century, and that the blessings which you now enjoy were enjoyed by your forefathers who were loyal subjects of the kings of England. The contrast between the laborer of New York and the laborer of Europe is not stronger now than it was when New York was governed by noblemen and gentlemen commissioned under the English great seal. And there are at this moment dependencies of the English crown in which all the phenomena which you attribute to purely democratic institutions may be seen in the highest perfection. The colony of Victoria, in Australia, was planted only twenty years ago. The population is now, I suppose, near a million, the revenue is enormous, near five million sterling, and raised without any murmuring. The wages of labor are higher than they are even with you. Immense sums are expended on education. And this is a province governed by the delegate of a hereditary sovereign. It, therefore, seems to me quite clear that the facts which you cite to prove the excellence of purely democratic institutions ought to be ascribed, not to those institutions, but to causes which operated in America, long before your Declaration of Independence, and which are still operating in many parts of the British Empire. You will perceive, therefore, that I do not propose, as you thought, to sacrifice the interests of the present generation to those of remote generations. It would, indeed, be absurd in a nation to part with institutions to which it is indebted for immense present prosperity from an apprehension that, after the lapse of a century, those institutions may be found to produce mischief. But I do not admit that the prosperity which your country enjoys arises from those parts of your policy which may be called, in an especial manner, Jeffersonian.

Those parts of your policy already produce bad effects, and will, unless I am greatly mistaken, produce fatal effects if they shall last till North America has 200 inhabitants to the square mile.

With repeated thanks for your present, I have the honor to be, sir, your faithful servant.

MACAULAY.

APPENDIX V

WASHINGTON'S FAMOUS APPEAL

IN Chapter V, the author quoted without question the famous statement of Washington, made on the eve of the Convention, which has been such an inspiration to successive generations of Americans and has so often in critical times profoundly influenced American statesmen to turn from time-serving policies to nobler considerations of principle.

The sole authority for this oft-quoted statement of Washington was Gouverneur Morris. When Washington died, Morris delivered on December 31, 1799, the funeral oration in New York City. In the course of that oration he said:

"The defects of the Federal compact are soon too deeply felt not to be generally acknowledged—America directs a revision by persons of her choice. He is their President. It is a question, *previous to the first meeting*, what course shall be pursued. Men of decided temper, who, devoted to the public, overlooked prudential considerations, thought a form of government should be framed entirely new. But cautious men, with whom popularity was an object, deemed it fit to consult and comply with the wishes of the people. AMERICANS!—let the opinion *then delivered* by the greatest and best of men, be ever present to your remembrance. He was collected within himself. His countenance had more than usual solemnity. His eye was fixed, and seemed to look into futurity.

'It is' (said he) 'too probable that no plan we propose will be adopted. Perhaps another dreadful conflict is to be sustained. If to please the people, we offer what we ourselves disapprove, how can we afterwards defend our work? Let us raise a standard to which the wise and the honest can repair. The event is in the hand of God.'

This was the patriot voice of Washington; and this the constant tenor of his conduct. With this deep sense of duty, he gave to our Constitution his cordial assent; and has added the fame of a legislator to that of a hero."

Obviously, Morris was using the orator's license, and the question arises whether this statement can be accepted as an historic fact or whether it is to be treated like the imaginary "sink or swim" speech of John Adams in the Continental Congress, which Daniel Webster by a similar flight of imagination introduced into one of his orations.

That Washington might well have made such a statement cannot be gainsaid. It was consistent, as Morris said, with "the constant tenor of his conduct." It represents his attitude not merely in the great crisis of 1787, but at all times in his public career. He was a plain man, who loved realities and not illusions, and he preferred the path of principle to that of expediency.

His many letters on the subject of a new form of government, written prior to the Constitutional Convention, breathe the spirit that is suggested in the words imputed to him by Gouverneur Morris. Thus, on March 31, 1787, less than two months before the Convention met, Washington wrote to Madison:

"My wish is that the Convention may adopt *no temporizing expedients*, but probe the defects of the Constitution to the bottom, and provide a radical cure, *whether they are agreed to or not*. A conduct of this kind will stamp wisdom and dignity on their proceedings, and *hold up a light which sooner or later will have its influence.*"

Moreover, there is no improbability that Morris, who was speaking in 1799, could have remembered with substantial accuracy the words of Washington, which he says were uttered in 1787. Morris in 1787 had the plastic memory of youth; and if the silent Washington made this striking remark on the eve of the Convention, it was one that would probably have deeply impressed itself upon his young friend's memory. It is just such a remark as a man would recall years later.

The difficulty is that Morris is somewhat vague in his statement that Washington made the remark. He does not say he heard it, but as he does describe Washington's demeanor and countenance at the time referred to, the inference is permissible that he did.

This, however, does not excuse the romancing in which some historians have indulged. Thus, Fiske's *Critical Period of American History*, Chapter VI, states that Washington made this remark in the Convention and speaking "from his president's chair." He then adds that—

"This outburst of noble eloquence carried conviction to every one, and henceforth we do not hear that any attempt was avowedly made to avoid the issues as they came up. It was a most wholesome tonic. It braced up the Convention to high resolves, and impressed upon all the delegates that they were in a situation where faltering or trifling was both wicked and dangerous."

This is pure romancing. As a "tonic" it was not very bracing, for the whole Convention was a series of compromises on matters of principle.

In recording the closing hours of the Convention, Fiske also says:

"When all was over, it is said that many of the members seemed awestruck. Washington sat with head bowed in solemn meditation."

I have already shown in Chapter XIV that this also is pure fiction. Fiske simply followed Bancroft in this flight of fancy.

The author in this book has endeavored to distinguish between the facts as shown by contemporaneous evidence, and the possible facts, which rest upon tradition only, and present-day speculations as to events, which may or may not have occurred.

APPENDIX VI

MISCELLANEOUS NOTES

Note I

Where the Convention met.

THE atmosphere of mystery that surrounds the Constitutional Convention, due to its secrecy, envelops even the precise room in which it met. There is no doubt that it met in the Pennsylvania State House, now known as Independence Hall. It is true that the minutes of the Carpenters Society of Philadelphia show that it offered its hall, in which the First Continental Congress convened, to the Convention, but there is no record that this invitation was ever accepted. There is abundant proof that the Convention met at the State House.

The doubt is whether it met on the ground floor in the room, where the Declaration of Independence was adopted and signed, or upstairs in a room which, in Colonial times, was used for the banquets, which the Mayor of Philadelphia was obliged to give on assuming his duties.

On any question relating to the history of Philadelphia John T. Watson, whose *Annals of Philadelphia and Pennsylvania* was first published in the year 1830, is an authority, for Watson was an indefatigable "snapper-up of trifles." He laboriously gathered together all the data relating to the Colonial history of Philadelphia. He says:

"The Convention met *upstairs* and at the same time the Chestnut Street pavement was covered with earth to silence the rumble of wheels."

Even more direct authority is given in the Diary of the Reverend Manasseh Cutler who, under date of July 13, 1787, described his visit on that day to the State House. His description is so interesting that it may be quoted *in extenso*:

"From Mr. Peale's we went to the State House. This is a noble building; the architecture is in a richer and grander style than any public building I have before seen. The first story is not an open walk, as is usual in buildings of this kind. In the middle, however, is a very broad cross-aisle, and the floor above supported by two rows of pillars. From this aisle is a broad opening to a large hall, toward

the west end, which opening is supported by arches and pillars. In this Hall the Courts are held, and, as you pass the aisle, you have a full view of the Court. The Supreme Court was now sitting. This bench consists of only three judges. Their robes are scarlet; the lawyers', black. The Chief Judge, Mr. McKean, was sitting with his hat on, which is the custom, but struck me as being very odd, and seemed to derogate from the dignity of a judge.

The hall east of the aisle is employed for public business. *The chamber over it is now occupied by the Continental Convention, which is now sitting*, but sentries are planted without and within—to prevent any person from approaching near—who appear to be very alert in the performance of their duty.

We passed through this broad aisle into the Mall. It is small, nearly square, and I believe does not contain more than one acre. As you enter the Mall through the State House, which is the only avenue to it, it appears to be nothing more than a large inner Courtyard to the State House, ornamented with trees and walks. But here is a fine display of rural fancy and elegance. It was so lately laid out in its present form that it has not assumed that air of grandeur which time will give it. The trees are yet small, but most judiciously arranged. The artificial mounds of earth, and depressions, and small groves in the squares have a most delightful effect. The numerous walks are well graveled and rolled hard; they are all in a serpentine direction, which heightens the beauty, and affords constant variety. That painful sameness, commonly to be met with in garden-alleys, and other works of this kind, is happily avoided here, for there are no two parts of the Mall that are alike. Hogarth's "Line of Beauty" is here completely verified. The public are indebted to the fertile fancy and taste of Mr. Sam'l Vaughan, Esq., for the elegance of this plan. It was laid out and executed under his direction about three years ago. The Mall is at present nearly surrounded with buildings, which stand near to the board fence that incloses it, and the parts now vacant will, in a short time, be filled up. On one part the Philosophical Society are erecting a large building for holding their meetings and depositing their Library and Cabinet. This building is begun, and, on another part, a County Court-house is now going up."

An argument that supports these two statements, the one being contemporaneous evidence, is the fact that if the Convention desired privacy it could secure it to better advantage by meeting in the upper room, for the large windows of the lower hall, which faced on Chestnut Street, would to some extent affect the privacy, which was so much desired.

On the other hand, there is the strong evidence of the resolution of the Pennsylvania Legislature, which reads as follows:

"The Honorable Mr. Speaker represented to the House, that the room they usually sat in was, at present, occupied by the Federal Convention, whose sitting had been prolonged beyond the time expected:—therefore, the *room above* had been fitted up, in order to accommodate either House or the Convention, as should be determined most eligible. Whereupon

"Ordered, That when this House adjourns, *it shall be to the room upstairs.*"

Supporting this statement is the persistent and unbroken tradition that the Convention met in the lower room, in which the Declaration of Independence was signed. Moreover, it would have been the natural meeting place, for it was well adapted for the purpose and there is additional probability that the Pennsylvania Legislature would have given this imposing gathering of the foremost citizens of the Colonies the place of honor. For these reasons history may well accept the tradition. Many facts pass from generation to generation without written evidence to support them.

History is also indebted to Cutler's Diary for a picture of the hall as it was when the Convention held its momentous sessions within those walls. It is interesting to know that as the members debated the great issues of the Convention they could see about them the trophies of the great struggle for independence. Cutler says:

"This room will be famous as long as it is in existence; for in this room the Declaration of the Independence of the United States of America was framed, signed, and declared by Congress. It is now improved as the depository of the trophies of war which established and crowned that bold and glorious Declaration. These trophies consist of pieces of cannon, small-arms, side-arms of officers and men, colors, standards, tents, military chests, and all the various accoutrements of officers and men; and many complete uniforms of different regiments, from field officers down to privates, collected principally from the two captured armies of Burgoyne and Cornwallis. There are also in this collection several trophies, captured by partisans of the American army in bold and desperate attempts, displayed in honor to those heroes who obtained them."

Note 2

The Secrecy of the Convention.

The following are some of the contemporaneous references to the policy of secrecy.

William Samuel Johnson wrote to his son, June 27, 1787: "It is agreed that, for the present, our deliberations shall be kept secret, so that I can only tell you that much information and eloquence has been displayed in the introductory speeches, and that we have hitherto preserved great temperance, candor, and moderation in debate, and evinced much solicitude for the public weal. Yet, as was to be expected, there is a great diversity of sentiment, which renders it impossible to determine what will be the result of our deliberation." *History of the Foundation of the Constitution* (1882), by George Bancroft, II, 430.

"Such circumspection and secrecy mark the proceedings . . . that the members find it difficult to acquire the habits of communication even among themselves, and are so cautious in defeating the curiosity

of the publick, that all debate is suspended on the entrance of their own inferior officers. . . . The anxiety of the people must be necessarily increased by every appearance of mystery in conducting this important business." *Boston Gazette*, June 11, 1787; *Virginia Independent Chronicle*, June 20, 1787.

Madison wrote to Jefferson, July 18: "The public mind is very impatient for the event and various reports are circulating which tend to inflame curiosity. I do not learn, however, that any discontent is expressed at the concealment." *Doc. Hist.*, IV, 266.

"Extracts of letters, pieces and paragraphs innumerable have filled the papers upon the result of their national consultations; but as the most absolute secrecy has been maintained by that august assembly, these paragraphs, etc., must be viewed as idle, the chimeras of the several political fancies which brought them forth." *New Hampshire Spy*, Sept. 1, 1787.

Jeremy Belknap wrote to Ebenezer Hazard, Sept. 4, 1787: "Such has been their secrecy that I believe not an article of the Constitution is known, but if it should prove only a tolerable one, I think every friend to the peace and happiness of America should give it his support." *Belknap Papers*, *Mass. Hist. Soc. Coll.*

"The result of the Federal Convention has at length transpired, after a profound secrecy being observed by the members who composed it, which, at least, has done honor to their fidelity, as we believe that scarcely another example can be advanced of the same caution among so large a number of persons." *Pennsylvania Journal*, October 6, 1787.

That the secrecy of the convention was not everywhere approved is seen from a letter by "Centinel" in the *Independent Gazetteer*, October, 1787: "The injunction of secrecy imposed on the members of the late Convention during their deliberation was obviously dictated by the genius of Aristocracy: it was deemed impolitic to unfold the principles of the intended government to the people, as this would have frustrated the end in view."

Naturally, even in those days, the press could not altogether refrain from what Washington called "premature speculations." A fictitious, detailed account of the "matters under consideration" in the Convention appeared in the *New York Daily Advertiser*, Aug. 13, 1787, in a letter from a "gentleman in Philadelphia to his friend in Charleston, So. Car., dated July 4, 1787."

Another ridiculous report was circulated from New Haven, Conn. It appeared in the *Pennsylvania Packet*, Aug. 13, *Independent Gazet-*

teer, Aug. 14, *Independent Chronicle*, Aug. 16, *Maryland Journal*, August 17, 1787, and in many other papers as follows: "A circular letter is handing about the country recommending a kingly government for these States. The writer proposes to send to England for the Bishop of Osnaburgh, second son of the King of Great Britain, and have him crowned King over this continent. We have found, by experience, says he, that we have not wit enough to govern ourselves, that all our declamation and parade about Republicanism, Liberty, Property and the Rights of Man are mere stuff and nonsense, and that it is high time for us to tread back the wayward path we have walked in these twelve years. This plan, we are told, gains friends and partisans rapidly, and it surely is necessary for the great body of the people to be on their guard. The Federal Convention may save us from this worst of all curses (a Royal Government) if we are wise enough to adopt their recommendation when they shall be communicated to us." The authorship of this report was investigated by Alexander Hamilton; see letters of Hamilton to Jeremiah Wadsworth, Aug. 20, Wadsworth to Hamilton, Aug. 26, D. Humphreys to Hamilton, Sept. 1, 16, saying that the article was first printed in a Fairfield, Conn., paper July 25, 1787. *Doc. Hist.*, IV, 255, 265, 267; see also *Constitutional History of the United States*, by George Ticknor Curtis, I, 624, note. It was regarded so seriously that a semi-official denial was made by the Convention as follows: "We are well informed that many letters have been written to the members of the Convention, from different quarters, respecting the reports idly circulating, that it is intended to establish a monarchical government, to send for the Bishop of Osnaburgh, etc., etc.,—to which it has been uniformly answered: 'Though we cannot, affirmatively, tell you what we are doing, we can negatively tell you what we are not doing—we never once thought of a King.'" *Boston Gazette*, Aug. 27, 1787.

Substantially the only correct item as to the Convention's actions was published in the *Pennsylvania Packet*, July 31, 1787 (and copied in many papers): "The Federal Convention having resolved upon the measures necessary to discharge their important trust adjourned until Monday next (i.e., from July 26 to Aug. 6) in order to give a committee, appointed for that purpose, time to arrange and systematize the materials which that honorable body have collected." This referred to the appointment of the Committee of Detail of which John Rutledge was chairman.

The papers also stated that, on Aug. 13, "it is said, a decision took place upon the most important question that has been agitated since the meeting of this Assembly." *Boston Gazette*, Aug. 27, 1787. This referred to the vote giving power to the House of Representatives to originate all appropriation bills.

"The profound secrecy hitherto observed by the Convention we cannot help considering as a happy omen, as it demonstrates that the spirit of party on any great and essential point, cannot have arisen to any height." *New York Daily Advertiser*, Aug. 14, 1787; *Pennsylvania Packet*, Aug. 22, 1787.

I am indebted for these interesting contemporaneous references to Warren's recently published book: "The Constitution and the Supreme Court."

Note 3

The Harmony of the Convention.

As early as June 21, 1787, the *Independent Chronicle* in Boston said: "We understand that there exists a very great diversity of opinion among the members, and that there has been already a wonderful display of wisdom, eloquence and patriotism." See also Washington to Hamilton, July 10, 1787. Nathan Dane wrote to Rufus King, July 5, 1787: "If the Convention do not agree, at least in some amendments, a universal despair of our keeping together will take place. It seems to be agreed here that the Virginia plan was admitted to come upon the floor of investigation by way of experiment, and with a few yieldings on this point, and that it keeps its ground at present. The contents of this plan was known to some, I believe, before the Convention met." *Farrand*, III, 54. See Luther Martin's Letter to the Maryland Legislature (1788), (*Elliott's Debates*, I, 358): "I believe near a fortnight—perhaps more—was spent in the discussion of this business, during which we were on the verge of dissolution, scarce held together by the strength of a hair, though the public papers were announcing our extreme unanimity."

See also *Autobiography of Col. William Few of Georgia* from original MSS. in possession of William Few Chrystie, *Mag. of Amer. Hist.* (1811), VII: "The modification of the State Rights, the different interests and diversity of opinions seemed for some time to present obstacles that could not be surmounted. After about three weeks' deliberation and debating, the Convention had serious thoughts of adjourning without doing anything. All human efforts seemed to fail. Doctor Franklin proposed to appoint a chaplain and implore Divine assistance, but his motion did not prevail. It was an awful and critical moment. If the Convention had then adjourned, the dissolution of the Union of the States seemed inevitable. This consideration no doubt had its weight in reconciling clashing opinions and interests." In a letter to Jefferson written from Philadelphia, Oct. 11, 1787, it is said: "The attempt is novel in history; and I can inform you of a more novel one—that I am assured by the gentlemen, who served, that

scarcely a personality or offensive expression escaped during the whole session. The whole was concluded with a liberality and candor which does them the highest honor." *Doc. Hist.*, IV, 324.

Note 4

Franklin's Speech of September 17th.

Franklin is said to have wept as he appealed to the members for their signatures—*Independent Gazetteer*, Sept. 21, 1787; *Salem Mercury*, Oct. 2, 1787.

"The Address of his Excellency, Dr. Franklin to the Members of the Convention previously to this solemn transaction (a correspondent assures us) was truly pathetick and extremely sensible"—*Connecticut Courant*, Oct. 9, 1787; *Boston Gazette*, Nov. 26, Dec. 3, 1787; and numerous other papers.

"Helvidius Priscus" (James Warren) in *Independent Chronicle*, Dec. 27, 1787, wrote:

"The ancient Doctor, who has always been republican in principle and conduct, doubted, trembled, hesitated, *wept* and signed."

Mrs. Mercy Warren, a sister of James Otis, and the wife of the patriot, Warren, who learned much from Elbridge Gerry and wrote the first history of the Revolution in 1805, tells us in her *History of the American Revolution*, III, 363, that Franklin

"signed the instrument for the consolidation of the United States, *with tears*, and apologized for doing it at all, from the doubts and apprehensions he felt that his countrymen might not be able to do better, even if they called a new Convention."

The author does not believe that the old philosopher wept. If so, like Andromache, he "smiled through his tears." Nothing in his gracious and witty speech suggests tears but only that overflowing good humor and common sense, that marked all his public utterances and actions. He was too well poised and had too great a sense of humor to shed tears in the hour of his triumph, for the adoption of the Constitution was the final capstone to his great career. Like *Horatio*, he was one "in suffering all, who suffers nothing," for all his life he had taken "Fortune's buffets and rewards with equal thanks."

Note 5

Woman's Part in Securing Ratification.

In view of the Nineteenth Amendment it is interesting to see that so chivalrous a cavalier, as General Washington was, did not fail to

acknowledge the part which the women had played in securing the adoption of the Constitution. Writing to Mrs. A. Stockton, August 31, 1788, he said:

"A spirit of accommodation was happily infused into the leading characters of the continent and the minds of men were gradually prepared, by disappointment, for the reception of a good government. Nor could I rob the fairer sex of their share in the glory of a revolution so honorable to human nature, for, indeed, I think you ladies are in the number of the best Patriots America can boast."

Appeals for support by the women had appeared in various papers in June, 1787:

"It is the duty of the American ladies in a particular manner to interest themselves in the success of the measures that are now pursuing by the Federal Convention for the happiness of America. They can retain their rank as rational beings only in a free government. In a monarchy (to which the present anarchy in America, if not restrained, must soon lead us) they will be considered as valuable members of society only as they are capable of being mothers for soldiers who are the pillars of crowned heads. It is in their power, by their influence over their husbands, brothers and sons. . . ." *Independent Gazetteer*, June 5, 1787; *Salem Mercury*, June 19, 1787.

Again I express my obligation to Charles Warren for these interesting excerpts from contemporaneous records. He has placed his profession and indeed all students of history under great obligation by reason of his unwearying efforts to rescue a little more from oblivion.

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